



भारत का राजपत्र The Gazette of India

असाधारण
EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on the 4th August, 1998:—

BILL No. 93 OF 1998

A Bill to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Foreign Exchange Management Act, 1998.
- (2) It extends to the whole of India.

(3) It shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India.

(4) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title,
extent,
application and
commence-
ment.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "Adjudicating Authority" means an officer authorised under sub-section (1) of section 16;

(b) "Appellate Tribunal" means the Appellate Tribunal for Foreign Exchange established under section 17;

(c) "authorised person" means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under sub-section (1) of section 10 to deal in foreign exchange or foreign securities;

(d) "Bench" means a Bench of the Appellate Tribunal;

(e) "capital account transaction" means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6;

(f) "Chairperson" means the Chairperson of the Appellate Tribunal;

(g) "currency" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank;

(h) "currency notes" means and includes cash in the form of coins and bank notes;

(i) "current account transaction" means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,—

(i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business,

(ii) payments due as interest on loans and as net income from investments,

(iii) remittances for living expenses of parents, spouse and children residing abroad, and

(iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children;

(j) "Director of Enforcement" means the Director of Enforcement appointed under sub-section (1) of section 35;

(k) "export", with its grammatical variations and cognate expressions, means,—

(i) the taking out of India to a place outside India any goods,

(ii) provision of services from India to any person outside India;

(l) "foreign currency" means any currency other than Indian currency;

(m) "foreign exchange" means foreign currency and includes,—

(i) deposits, credits and balances payable in any foreign currency,

(ii) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,

(iii) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency;

(n) "foreign security" means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency;

(o) "import", with its grammatical variations and cognate expressions, means bringing into India any goods or services;

2 of 1934.

(p) "Indian currency" means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one rupee notes issued under section 28A of the Reserve Bank of India Act, 1934;

(q) "Member" means a Member of the Appellate Tribunal and includes the Chairperson thereof;

(r) "notify" means to notify in the Official Gazette and the expression "notification" shall be construed accordingly;

(s) "person" includes—

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and

(vii) any agency, office or branch owned or controlled by such person;

(t) "person resident in India" means—

(i) a person residing in India for more than one hundred and eighty-two days during the course of a period of three hundred and sixty-five days immediately preceding the date on which such period is reckoned,

(ii) any person or body corporate registered or incorporated in India,

(iii) an office, branch or agency in India owned or controlled by a person resident outside India,

(iv) an office, branch or agency outside India owned or controlled by a person resident in India;

(u) "person resident outside India" means a person who is not resident in India;

(v) "prescribed" means prescribed by rules made under this Act;

(w) "repatriate to India" means bringing into India the realised foreign exchange and—

(i) the selling of such foreign exchange to an authorised person in India in exchange for rupees; or

(ii) the holding the realised amount in an account with an authorised person in India to the extent notified by the Reserve Bank,

and includes use of the realised amount for discharge of a debt or liability denominated in foreign exchange and the expression "repatriation" shall be construed accordingly;

2 of 1934.

(x) "Reserve Bank" means the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934;

18 of 1944.

46 of 1959.

52 of 1963.

(y) "security" means shares, stocks, bonds and debentures, Government securities as defined in the Public Debt Act, 1944, savings certificates to which the Government Savings Certificates Act, 1959 applies, deposit receipts in respect of deposits of securities and units of the Unit Trust of India established under sub-section (1) of section 3 of the Unit Trust of India Act, 1963 or of any mutual fund and includes certificates of title to securities, but does not include bills of exchange or

promissory notes other than Government promissory notes or any other instruments which may be notified by the Reserve Bank as security for the purposes of this Act;

(z) "service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, medical assistance, legal assistance, chit fund, real estate, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

(za) "specify" means to specify by regulations made under this Act and the expression "specified" shall be construed accordingly;

(zb) "transfer" includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

CHAPTER II

REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE

Dealing in foreign exchange, etc.

3. Save as otherwise provided in this Act, no person shall in any manner deal in or transfer any foreign exchange or foreign security to any person not being an authorised person.

Holding of foreign exchange, etc.

4. Save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

Current account transactions.

5. Any person may sell or draw foreign Exchange to or from an authorised person if such sale or drawal is a current account transaction:

Provided that the Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

Capital account transactions.

6. (1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.

(2) The Reserve Bank may, in consultation with the Central Government, specify—

(a) any class or classes of capital account transactions which are permissible;

(b) the limit up to which foreign exchange shall be admissible for such transactions:

Provided that the Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business.

(3) Without prejudice to the generality of the provisions of sub-section (2), the Reserve Bank may, by regulations prohibit, restrict or regulate the following,—

(a) transfer or issue of any foreign security by a person resident in India;

(b) transfer or issue of any security by a person resident outside India;

(c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;

(d) any borrowing or lending in foreign exchange in whatever form or by whatever name called;

(e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;

(f) deposits between persons resident in India and persons resident outside India;

- (g) export, import or holding of currency or currency notes;
- (h) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;
- (i) acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;
- (j) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred,—
 - (i) by a person resident in India and owed to a person resident outside India; or
 - (ii) by a person resident outside India.

(4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

(5) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

(6) Without prejudice to the provisions of this section, the Reserve Bank may by regulation prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

7. (1) Every exporter of goods shall—

(a) furnish to the Reserve Bank or to such other authority a declaration in such form and in such manner as may be specified, containing true and correct material particulars, including the amount representing the full export value or, if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in a market outside India;

(b) furnish to the Reserve Bank such other information as may be required by the Reserve Bank for the purpose of ensuring the realisation of the export proceeds by such exporter.

(2) The Reserve Bank may, for the purpose of ensuring that the full export value of the goods or such reduced value of the goods as the Reserve Bank determines, having regard to the prevailing market conditions, is received without any delay, direct any exporter to comply with such requirements as it deems fit.

(3) Every exporter of services shall furnish to the Reserve Bank or to such other authorities a declaration in such form and in such manner as may be specified, containing the true and correct material particulars in relation to payment for such services.

8. Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.

9. The provisions of sections 4 and 8 shall not apply to the following, namely:—

(a) possession of foreign currency or foreign coins by any person up to such limit as the Reserve Bank may specify;

(b) foreign currency account held or operated by such person or class of persons and the limit up to which the Reserve Bank may specify;

Export of
goods and
services.

Realisation
and repatria-
tion of foreign
exchange.

Exemption from
realisation and
repatriation in
certain cases.

(c) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank;

(d) foreign exchange held by a person resident in India up to such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising therefrom;

(e) foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means up to such limit as the Reserve Bank may specify; and

(f) such other receipts in foreign exchange as the Reserve Bank may specify.

CHAPTER III

AUTHORISED PERSON

Authorised
person.

10. (1) The Reserve Bank may, on an application made to it in this behalf, authorise any person to be known as authorised person to deal in foreign exchange or in foreign securities, as an authorised dealer, money changer or off-shore banking unit or in any other manner as it deems fit.

(2) An authorisation under this section shall be in writing and shall be subject to the conditions laid down therein.

(3) An authorisation granted under sub-section (1) may be revoked by the Reserve Bank at any time if the Reserve Bank is satisfied that—

(a) it is in public interest to do so; or

(b) the authorised person has failed to comply with the condition subject to which the authorisation was granted or has contravened any of the provisions of the Act or any rule, regulation, notification, direction or order made thereunder:

Provided that no such authorisation shall be revoked on any ground referred to in clause (b) unless the authorised person has been given a reasonable opportunity of making a representation in the matter.

(4) An authorised person shall, in all his dealings in foreign exchange or foreign security comply with such general or special directions or orders as the Reserve Bank may, from time to time, think fit to give, and, except with the previous permission of the Reserve Bank, an authorised person shall not engage in any transaction involving any foreign exchange or foreign security which is not in conformity with the terms of his authorisation under this section.

(5) An authorised person shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declaration and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, and where the said person refuses to comply with any such requirement or makes only unsatisfactory compliance therewith, the authorised person shall refuse in writing to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank.

Reserve Bank's
powers to issue
directions to
authorised
person.

11. (1) The Reserve Bank may, for the purpose of securing compliance with the provisions of this Act and of any rules, regulations, notifications or directions made thereunder, give to the authorised persons any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security.

(2) The Reserve Bank may, for the purpose of ensuring the compliance with the provisions of this Act or of any rule, regulation, notification, direction, or order made

thereunder, direct any authorised person to furnish such information, in such manner, as it deems fit.

(3) Where any authorised person contravenes any direction given by the Reserve Bank under this Act or fails to file any return as directed by the Reserve Bank, the Reserve Bank may, after giving reasonable opportunity of being heard, impose on the authorised person a penalty which may extend to ten thousand rupees and in the case of continuing contravention with an additional penalty which may extend to two thousand rupees for every day during which such contravention continues.

12. (1) The Reserve Bank may, at any time, cause an inspection to be made, by any officer of the Reserve Bank specially authorised in writing by the Reserve Bank in this behalf, of the business of any authorised person as may appear to it to be necessary or expedient for the purpose of—

Power of Reserve Bank to inspect authorised person.

(a) verifying the correctness of any statement, information or particulars furnished to the Reserve Bank;

(b) obtaining any information or particulars which such authorised person has failed to furnish on being called upon to do so;

(c) securing compliance with the provisions of this Act or of any rules, regulations, directions or orders made thereunder.

(2) It shall be the duty of every authorised person, and where such person is a company or a firm, every director, partner or other officer of such company or firm, as the case may be, to produce to any officer making an inspection under sub-section (1), such books, accounts and other documents in his custody or power and to furnish him any statement or information relating to the affairs of such person, company or firm as the said officer may require within such time and in such manner as the said officer may direct.

CHAPTER IV

CONTRAVENTION AND PENALTIES

13. If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to twice the sum involved in such contravention where such amount is quantifiable, or up to one lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

Penalties.

14. (1) Subject to the provisions of sub-section (2) of section 18, if any person fails to make full payment of the penalty imposed on him under section 13 within a period of ninety days from the date on which the notice for payment of such penalty is served on him, he shall be liable to civil imprisonment under this section.

Enforcement of the orders of adjudicating authority.

(2) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Adjudicating Authority has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Adjudicating Authority, for reasons in writing, is satisfied—

(a) that a defaulter, with the object or effect of obstructing the recovery of penalty, has after the issue of notice by the Adjudicating Authority, dishonestly transferred, concealed, or removed any part of his property, or

(b) that the defaulter has, or has had since the issuing of notice by the Adjudicating Authority, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

(3) Notwithstanding anything contained in sub-section (1), a warrant for the arrest of the defaulter may be issued by the Adjudicating Authority if the Adjudicating Authority is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Adjudicating Authority.

(4) Where appearance is not made pursuant to a notice issued and served under sub-section (1), the Adjudicating Authority may issue a warrant for the arrest of the defaulter.

(5) A warrant of arrest issued by the Adjudicating Authority under sub-section (3) or sub-section (4) may also be executed by any other Adjudicating Authority within whose jurisdiction the defaulter may for the time being be found.

(6) Every person arrested in pursuance of a warrant of arrest under this section shall be brought before the Adjudicating Authority issuing the warrant as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey):

Provided that, if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him such officer shall at once release him.

Explanation.—For the purpose of this section, where the defaulter is a Hindu Undivided Family, the *karta* thereof shall be deemed to be the defaulter.

(7) When a defaulter appears before the Adjudicating Authority pursuant to a notice to show cause or is brought before the Adjudicating Authority under this section, the Adjudicating Authority shall give the defaulter an opportunity showing cause why he should not be committed to the civil prison.

(8) Pending the conclusion of the inquiry, the Adjudicating Authority may, in his discretion, order the defaulter to be detained in the custody of such officer as the Adjudicating Authority may think fit or release him on his furnishing the security to the satisfaction of the Adjudicating Authority for his appearance when required.

(9) Upon the conclusion of the inquiry, the Adjudicating Authority may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give a defaulter an opportunity of satisfying the arrears, the Adjudicating Authority may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding fifteen days, or release him on his furnishing security to the satisfaction of the Adjudicating Authority for his appearance at the expiration of the specified period if the arrears are not satisfied.

(10) When the Adjudicating Authority does not make an order of detention under sub-section (9), he shall, if the defaulter is under arrest, direct his release.

(11) Every person detained in the civil prison in execution of the certificate may be so detained,—

(a) where the certificate is for a demand of an amount exceeding rupees one crore—up to three years, and

(b) in any other case—up to six months:

Provided that he shall be released from such detention on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison.

(12) A defaulter released from detention under this section shall not, merely by reason of his release, be discharged from his liability for the arrears but he shall not be liable to be arrested under the certificate in execution of which he was detained in the civil prison.

(13) A detention order may be executed at any place in India in the manner provided for the execution of warrant of arrest under the Code of Criminal Procedure, 1973.

15. (1) Any contravention under section 13 may, on an application made by the person committing such contravention, be compounded by the Director of Enforcement or such other officers of the Directorate of Enforcement as may be authorised in this behalf by the Central Government in such manner as may be prescribed.

Power to compound contravention.

(2) Where a contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention so compounded.

CHAPTER V

ADJUDICATION AND APPEAL

16. (1) For the purpose of adjudication under section 13, the Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government as it may think fit, as the Adjudicating Authorities for holding an inquiry in the manner prescribed after giving the accused person a reasonable opportunity of being heard for the purpose of imposing any penalty:

Appointment of Adjudicating Authority.

Provided that where the Adjudicating Authority is of opinion that the accused person is likely to abscond or is likely to evade in any manner, the payment of penalty, if levied, it may direct such person to furnish a bond or guarantee for such amount and subject to such conditions as it may deem fit.

(2) No Adjudicating Authority shall hold an enquiry under sub-section (1) except upon a complaint in writing made by any officer authorised by a general or special order by the Central Government.

(3) Every Adjudicating Authority shall have the same powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 27 and—

(a) all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code;

(b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

45 of 1860.

2 of 1974.

17. The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Appellate Tribunal for Foreign Exchange to hear appeals against the orders of the Adjudicating Authorities under this Act.

Establishment of Appellate Tribunal.

18. (1) Save as provided in sub-section (2), the Central Government or any person aggrieved by an order made by an Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal:

Appeal to the Appellate Tribunal.

Provided that any person appealing against the order of the Adjudicating Authority levying any penalty, shall while filing the appeal, deposit the amount of such penalty with such authority as may be notified by the Central Government :

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority is received by him and it shall be in such form and be accompanied by such fee as may be prescribed :

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority.

(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Composition of
Appellate
Tribunal.

19. (1) The Appellate Tribunal shall consist of a Chairperson and such number of Members as the Central Government may deem fit.

(2) Subject to the provisions of this Act,—

(a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson with one or more Members as the Chairperson may deem fit;

(c) the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, notify;

(d) the Central Government shall notify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson may transfer a Member from one Bench to another Bench.

(4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.

Qualifications
for appoint-
ment.

20. A person shall not be qualified for appointment as the Chairperson or a Member unless he—

(a) is or has been or is qualified to be a Judge of a High Court; or

(b) has been a member of the Indian Legal Service and has held a post in Grade I of that service for at least three years;

(c) is qualified to be a member of the Central Administrative Tribunal.

Term of office.

21. The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office:

Provided that no Chairperson or other Member shall hold office as such after he has attained,—

(a) in the case of the Chairperson, the age of sixty-five years;

(b) in the case of any other Member, the age of sixty-two years.

Conditions of
service.

22. The salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after appointment,

Vacancies.

23. If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member, then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

24. (1) The Chairperson or a Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Resignation
and removal.

Provided that the Chairperson or a Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is the earliest.

(2) The Chairperson or a Member shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by such person as the President may appoint for this purpose in which the Chairperson or a Member concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

25. (1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, such one of the Members as the Central Government may, by notification, authorise in this behalf, shall act as the Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

Member to act
as Chairperson
in certain
circumstances.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, such one of the Members as the Central Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

26. (1) The Central Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit.

Staff of
Appellate
Tribunal.

(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal shall be such as may be prescribed.

5 of 1908.

27. (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

Procedure
and powers of
Appellate
Tribunal.

5 of 1908.

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

1 of 1872.

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a representation of default or deciding it *ex parte*;

(h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and

(i) any other matter which may be prescribed by the Central Government.

(3) An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

45 of 1860

2 of 1974.

Distribution of business amongst Benches.

28. Where any Benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

Power of Chairperson to transfer cases.

29. On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson may transfer any case pending before one Bench, for disposal, to any other Bench.

Decision to be by majority.

30. If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

Right of appellant to take assistance of legal practitioner and of Government, etc., to appoint presenting officers.

31. (1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Appellate Tribunal.

(2) The Central Government may authorise one or more legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

Members, etc., to be public servants.

32. The Chairperson, Members and other officers and employees of the Appellate Tribunal and the Adjudicating Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Civil court not to have jurisdiction.

33. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Appeal to High Court.

34. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Explanation.—In this section "High Court" means—

(a) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(b) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.

CHAPTER VI

DIRECTORATE OF ENFORCEMENT

35. (1) The Central Government shall establish a Directorate of Enforcement with a Director and such other officers or class of officers as it thinks fit, who shall be called officers of Enforcement, for the purposes of this Act.

Directorate of
Enforcement

(2) Without prejudice to provisions of sub-section (1), the Central Government may authorise the Director of Enforcement or an Additional Director of Enforcement or a Deputy Director of Enforcement to appoint officers of Enforcement below the rank of an Assistance Director of Enforcement.

(3) Subject to such conditions and limitations as the Central Government may impose, an officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under this Act.

36. (1) The Director of Enforcement and other officers of Enforcement shall take up for investigation the contravention referred to in section 13.

Power of
arrest, search,
seizure, etc.

(2) The Director of Enforcement and other officers of Enforcement shall exercise the like powers which are conferred on Income-tax authorities under Chapter XIII of the Income-tax Act, 1961 and shall exercise such powers, subject to such limitations laid down under that Act.

43 of 1961.

37. The Central Government may, by order and subject to such conditions and limitations as it thinks fit to impose, authorise any officer of customs or any central excise officer or any police officer or any other officer of the Central Government or a State Government to exercise such of the powers and discharge such of the duties of the Director of Enforcement or any other officer of Enforcement under this Act as may be stated in the order.

Empowering
other officers.

38. (1) Notwithstanding anything contained in this Act, the Central Government may, by notification, authorise any officer or class of officers in the Central Government, State Government or the Reserve Bank to investigate any contravention referred to in section 13.

Investigation
of other
offence by
certain officers.

(2) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on the Income-tax authorities under the Income-tax Act, 1961, subject to such conditions and limitations as the Central Government may impose.

43 of 1961.

CHAPTER VII

MISCELLANEOUS

39. Where any document—

(i) is produced or furnished by any person or have been seized from the custody or control of any person, in either case, under this Act or under any other law; or

Presumption as
to documents
in certain
cases.

(ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed) in the course of investigation of any contravention under this Act alleged to have been committed by any person,

and such document is tendered in any proceeding under this Act in evidence against him, or against him and any other person who is proceeded against jointly with him, the court or the adjudicating officer, as the case may be, shall—

(a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;

(c) in a case falling under clause (i), also presume, unless the contrary is proved, the truth of the contents of such document.

Suspension of
operation of
this Act.

40. (1) If the Central Government is satisfied that circumstances have arisen rendering it necessary that any permission granted or restriction imposed by this Act should cease to be granted or imposed, or if it considers necessary or expedient so to do in public interest, the Central Government may, by notification, suspend or relax to such extent either indefinitely or for such period as may be notified, the operation of all or any of the provisions of this Act.

(2) Where the operation of any provision of this Act has under sub-section (1) been suspended or relaxed indefinitely, such suspension or relaxation may, at any time while this Act remains in force, be removed by the Central Government by notification.

(3) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

Power of
Central
Government to
give directions.

41. For the purposes of this Act, the Central Government may, from time to time, give to the Reserve Bank such general or special directions as it thinks fit, and the Reserve Bank shall, in the discharge of its functions under this Act, comply with any such directions.

Contravention
by companies.

42. (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(1) "company" means any body corporate and includes a firm or other association of individuals; and

(ii) "director", in relation to a firm, means a partner in the firm.

43. Any right, obligation, liability, proceedings or appeal arising in relation to the provisions of section 13 shall not abate by reason of death or insolvency of the person liable under that section and upon such death or insolvency such rights and obligations shall devolve on the legal representative of such person or the official receiver or the official assignee, as the case may be.

Death or
insolvency in
certain cases.

44. No suit, prosecution or other legal proceeding shall lie against the Central Government or the Reserve Bank or any officer of that Government or of the Reserve Bank or any other person exercising any power or discharging any functions or performing any duties under this Act, for anything in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made thereunder.

Bar of legal
proceedings.

45. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, do anything not inconsistent with such provisions of this Act for the purpose of removing the difficulty:

Removal of
difficulties.

Provided that no such order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

46. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

Power to make
rules.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for,—

(a) the imposition of reasonable restrictions on current account transactions under section 5;

(b) the manner in which the contravention may be compounded under sub-section (1) of section 15;

(c) the manner of holding an inquiry by the Adjudicating Authorities under sub-section (1) of section 16;

(d) the form of appeal and fee for filing such appeal under section 18;

(e) the salary and allowances payable to and the other items and conditions of service of the Chairperson and Members of the Appellate Tribunal under section 22;

(f) the salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 26;

(g) the additional matters in respect of which the Administrative Tribunal may exercise the powers of a civil court under clause (i) of sub-section (2) of section 27;

(h) the authority or person and the manner in which any document may be authenticated under clause (ii) of section 39; and

(i) any other matter which is required to be, or may be prescribed.

47. (1) The Reserve Bank may, by notification, make regulations, to carry out the provisions of this Act and the rules made thereunder.

Power to make
regulations.

(2) Without prejudice to the generality of the foregoing power, such regulations may provide for,—

(a) the permissible classes of capital account transactions, the limits of admissibility of foreign exchange for such transactions, and the prohibition, restriction or regulation of certain capital account transactions under section 6;

(b) the manner and the form in which the declaration is to be furnished under clause (a) of sub-section (1) of section 7;

(c) the period within which and the manner of repatriation of foreign exchange under section 8;

(d) limit up to which any person may possess foreign currency or foreign coins under clause (a) of section 9;

(e) the class of persons and the limit up to which foreign currency account may be held or operated under clause (b) of section 9;

(f) limit up to which foreign exchange acquired may be exempt under clause (d) of section 9;

(g) limit up to which foreign exchange acquired may be retained under clause (e) of section 9;

(h) any other matter which is required to be, or may be, specified.

Rules and regulations to be laid before Parliament.

48. Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Repeal and saving.

49. (1) The Foreign Exchange Regulation Act, 1973 is hereby repealed and the Appellate Board constituted under sub-section (1) of section 52 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved.

46 of 1973.

(2) On the dissolution of the said Appellate Board, the person appointment as Chairman of the Appellate Board and every other person appointed as Member and holding office as such immediately before such date shall vacate their respective offices and no such Chairman or other person shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service.

(3) Notwithstanding such repeal,—

(a) all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not been repealed;

(b) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorization or exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(c) any appeal preferred to the Appellate Board under sub-section (2) of section 52 of the repealed Act but not disposed of before the commencement of this Act shall stand transferred to and shall be disposed of by the Appellate Tribunal constituted under this Act;

(d) every appeal from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of section 52 of the repealed Act shall, if not filed before the commencement of this Act, be filed before the High Court within a period of sixty days of such commencement :

Provided that the High Court may entertain such appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period.

10 of 1897. (4) The mention of particular matters in sub-sections (2) and (3) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

STATEMENT OF OBJECTS AND REASONS

The Foreign Exchange Regulation Act, 1973 was reviewed in 1993 and several amendments were enacted as part of the on-going process of economic liberalisation relating to foreign investments and foreign trade for closer interaction with the world economy. At that stage, the Central Government decided that a further review of the Foreign Exchange Regulation Act would be undertaken in the light of subsequent developments and experience in relation to foreign trade and investment. It was subsequently felt that a better course would be to repeal the existing Foreign Exchange Regulation Act and enact a new legislation. Reserve Bank of India was accordingly asked to undertake a fresh exercise and suggest a new legislation. A Task Force constituted for this purpose submitted its report in 1994 recommending substantial changes in the existing Act.

Significant developments have taken place since 1993 such as substantial increase in our foreign exchange reserves, growth in foreign trade, rationalisation of tariffs, current account convertibility, liberalisation of Indian investments abroad, increased access to external commercial borrowings by Indian corporates and participation of foreign institutional investors in our stock markets.

Keeping in view the changed environment, the Central Government has decided to introduce the Foreign Exchange Management Bill and repeal the Foreign Exchange Regulation Act, 1973. The provisions of the Bill aim at consolidating and amending the law relating to Foreign Exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange markets in India.

The notes on clauses explain in detail the various provisions contained in the Bill.

NEW DELHI;
The 27th July, 1998.

YASHWANT SINHA.

Notes on clauses

Clause 2 defines the various expressions used in the Bill.

Clause 3 seeks to prohibit dealings in foreign exchange except through an authorised person.

Clause 4 describes the provisions in relation to acquisition, holding, etc., of foreign exchange, foreign security or immovable property situated outside India.

Clause 5 stipulates that sale or drawal for all current account transactions shall qualify for drawal of foreign exchange from authorised persons. It also empowers the Central Government to prescribe, in public interest and in consultation with the Reserve Bank, the restrictions for such transactions as may be considered reasonable.

Sub-Clause (1) of clause 6 provides that subject to certain conditions and limitations any person may sell or draw foreign exchange to or from any authorised person for capital account transaction. Sub-clause (2) thereof enables the Reserve Bank in consultation with the Central Government to specify the permissible class of such transactions and the limits upto which foreign exchange shall be admissible for such transactions. Sub-Clause (3) further enables the Reserve Bank to prohibit, restrict or regulate the specific transactions mentioned therein by regulations framed under the Act.

Sub-clauses (4) and (5) incorporate the existing policy with respect to the person resident in India acquiring, etc., foreign assets outside India and a non-resident acquiring, etc., assets in India while he was resident in India.

Sub-clause (6) empowers the Reserve Bank to regulate the setting up of branches or offices in India by foreign firms.

Clause 7 provides for control over repatriation of sale proceeds of exported goods. The clause preserves the Reserve Bank's existing powers to direct and exporter to comply with the requirements as deemed fit for the purpose of ensuring that the export value of the goods is received without any delay.

Clause 8 casts certain obligations on persons resident in India having any amount of foreign exchange due or accrued in his favour.

Clause 9 seeks to provide for exemptions in respect of realisation and repatriation in the cases specified therein. Most of the transactions specified therein are at present exempted in terms of various notifications of the Reserve Bank.

Clause 10 empowers the Reserve Bank to authorise persons to deal in foreign exchange or in foreign securities. The authorisation can also be granted for dealing in foreign securities besides foreign exchange. The Reserve Bank may specify the conditions in the authorisation and may also revoke the same in the public interest in the case of any contravention of the provisions of this Act or failure to comply with the conditions in the authorization.

Clause 11 empowers the Reserve Bank to issue directions to authorised persons and impose penalty if the direction given by the Reserve Bank is contravened by any authorised person.

Clause 12 empowers the Reserve Bank to inspect the authorised person who shall have to produce such books, accounts and other documents, etc., as may be required by the officer making the inspection.

Clause 13 deals with the contraventions as civil offences and the adjudicating officers are empowered to impose penalties.

Clause 14 lays down the procedure for payment of penalty and the consequences of civil imprisonment for failure to make full payment of the penalty within the specified period. It provides that the detention order shall be executed like a warrant of arrest.

Clause 15 seeks to vest in the Directorate of Enforcement the powers to compound offences. This power is to be exercised in accordance with the rules framed by the Central Government.

Clause 16 provides for appointment of Central Government officers as Adjudicating Authorities for holding an inquiry for the purpose of imposing any penalty. It also provides for the procedure for taking cognizance by the Adjudicating Authority and confers powers of a civil court on the said Authority.

Clause 17 provides for establishment of an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority.

Clause 18 provides for preferring of appeal before the Appellate Tribunal against the order made by the Adjudicating Authority, period for filing the appeal, condonation of delay for sufficient cause and the period for disposal of appeal.

Clauses 19 to 22 provide for the composition of the Appellate Tribunal, the qualifications for appointment of the Chairperson and other Members of the Appellate Tribunal, the term of office of the Chairperson and other Members and their salary and allowances and other conditions of service.

Clause 23 deals with filling up of the casual vacancies.

Clause 24 deals with resignation of the Chairperson or a Member.

Clause 25 explains certain circumstances in which a Member may act as Chairperson.

Clause 26 requires the Central Government to provide the Appellate Tribunal with officers and other employees.

Clause 27 enables the Appellate Tribunal to adopt its own procedure. The proceedings of the Appellate Tribunal shall be deemed to be judicial proceedings.

Clause 28 provides for distribution of business of the Appellate Tribunal amongst the Benches.

Clause 29 empowers the Chairperson to transfer cases from one Bench to another Bench.

Clause 30 provides that the decision of the Appellate Tribunal shall be by majority.

Clause 31 provides that the appellant may take the assistance of a legal practitioner to present his case before the Appellate Tribunal.

Clause 32 declares the Chairperson, Members, officers and other employees of the Appellate Tribunal and the Adjudicating Authority to be public servants within the meaning of Section 21 of the Indian Penal Code.

Clause 33 bars the jurisdiction of the civil court in respect of matters to be dealt with by Adjudicating Authority or by the Appellate Tribunal.

Clause 34 provides for filing an appeal to the High Court against the decision or order of the Appellate Tribunal on a question of law arising out of such decision or order.

Clause 35 provides for establishment of a Directorate of Enforcement.

Sub-clause (2) of clause 36 provides that the Director of Enforcement and other officers of enforcement shall have the powers of investigation conferred on Income-tax authorities under the Income-tax Act, 1961.

Clause 37 enables the Central Government to empower the officers of the Central Government or a State Government to exercise the powers and discharge the duties of the Director of Enforcement or other officers of the Enforcement.

Clause 38 enables the Central Government to authorise any officer or class of officers in the Central Government, a State Government or the Reserve Bank to investigate the contravention.

Sub-clause (1) of clause 40 empowers the Central Government in the public interest and by notification to suspend or relax the provisions of the enactment in certain circumstances. *Sub-clause (3)* provides that notification issued thereunder shall be laid before each House of Parliament.

Clause 41 empowers the Central Government to give general or special directions to the Reserve Bank.

Clause 42 provides that where contravention of any of the provisions of this enactment is committed by a Company, the person responsible for the conduct of its business shall be deemed to be guilty of the contravention.

Clause 44 bars the prosecution or legal proceedings against the officers of the Central Government or the Reserve Bank or any other person exercising any powers or discharging any functions or performing any duties under the provisions of this enactment for anything done in good faith.

Clause 45 empowers the Central Government to remove the difficulties in giving effect to the provisions of the Bill after its enactment.

Clause 46 empowers the Central Government to frame the rules and clause 47 empowers the Reserve Bank to make regulations to carry out the provisions of this enactment.

Clause 48 provides for laying before Parliament the rules and the regulations made under this enactment.

Clause 49 provides for repeal of the Foreign Exchange Regulation Act, 1973 and for dissolution of the Appellate Board constituted under section 52 of the said Act.

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 16 provides for appointment of Adjudicating Authorities. It is proposed to utilize some of the existing posts in the Directorate of Enforcement for this purpose. No additional expenditure is, therefore, contemplated at this stage for appointment of the Adjudicating Authorities on this account.

Clause (22) and sub-clauses (1) and (3) of clause 26 of the Bill provide for payment of the salaries and allowances of the Chairperson, Members, officers and employees of the Appellate Tribunal. At present the Appellate Board consists of a full-time Chairperson and other Members. For the present, the size of the Appellate Tribunal will be retained at the existing level. The actual recurring expenditure on Foreign Exchange Regulation Appellate Board for the year 1997-98 was rupees twelve lac and forty thousand approximately. No additional expenditure shall be involved on this account.

Sub-clause (1) of clause 35 of the Bill provides for the appointment of the Director of Enforcement and other officers. The Directorate of Enforcement as it exists now, is headed by a Director and consists of Special Director of Enforcement, Additional Director of Enforcement, Deputy Director of Enforcement and Assistant Directors of Enforcement besides other classes of officers of Enforcement.

The existing Foreign Exchange Regulation Act to which the proposed Bill seeks to replace, already provides for the Directorate of Enforcement. The expenditure connected with the pay and allowances, etc., of the Directorate of Enforcement is being regularly voted by the Parliament. While the Budget Estimate figures for 1997-98 was rupees ten crore thirty seven lac, the Revised Estimate figures during 1997-98 was rupees twelve crores eighty-six lac. The actual expenditure incurred during 1997-98 was rupees ten crore eighty-seven lac. The budget estimate for the year 1998-99 is rupees fourteen crore. The Bill if enacted shall not involve any additional expenditure on this account.

The Bill, if enacted, will not incur any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 46 of the Bill empowers the Central Government to make rules for the purpose of carrying into effect the provisions of the proposed enactment. The various matters in relation to which such rules may be made have been enumerated in detail under various items of sub-clause (2) of that clause and relate mainly to the form of appeal, fee for filing such appeal, the manner of holding an enquiry by the Adjudicating Authority, the manner of authentication of any document by any authority or a person.

Clause 47 of the Bill empowers the Reserve Bank to frame regulations for carrying out the provisions of the proposed enactment and the rules framed thereunder. The matters in relation to which such regulations may be made have been explained in detail under sub-clause (2) of clause 47. Such regulations may provide for the permissible classes of capital account transactions, the manner and the form in which the declaration is to be furnished by every exporter of goods, the period and manner of repatriation of foreign exchange and the permissible limits up to which foreign currency, foreign coins and foreign exchange may be acquired or retained.

These are matters of detail and essential for effective administration of the provisions of the Bill. It is difficult to provide for all the situations in the Bill itself and the delegation of these legislative powers is, therefore, of a normal character.

BILL NO. 91 OF 1998

A Bill to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.

WHEREAS the Political Declaration and Global Programme of Action, annexed to the resolution S-17/2 was adopted by the General Assembly of the United Nations at its seventeenth special session on the twenty-third day of February, 1990;

AND WHEREAS the Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June, 1998 calls upon the Member States to adopt national moneylaundering legislation and programme;

AND WHEREAS it is considered necessary to implement the aforesaid resolution and the Declaration;

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Prevention of Money-laundering Act, 1998.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. (1) In this Act, unless the context otherwise requires,—

Definitions.

(a) "Adjudicating Authority" means an Adjudicating Authority appointed under sub-section (1) of section 6;

(b) "Appellate Tribunal" means the Appellate Tribunal established under section 24;

(c) "Assistant Director" means an Assistant Director appointed under sub-section (1) of section 48;

(d) "attachment" means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III;

(e) "Bench" means a Bench of the Appellate Tribunal;

(f) "Chairperson" means the Chairperson of the Appellate Tribunal;

(g) "Deputy Director" means a Deputy Director appointed under sub-section (1) of section 48;

(h) "Director" or "Additional Director" or "Joint Director" means a Director or Additional Director or Joint Director, as the case may be, appointed under sub-section (1) of section 48;

2 of 1934. (i) "financial institution" shall have the same meaning as assigned to it under clause (c) of section 45-I of the Reserve Bank of India Act, 1934;

15 of 1992. (j) "intermediary" means a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992;

(k) "Member" means a Member of the Appellate Tribunal and includes the Chairperson;

(l) "money-laundering" has the meaning assigned to it in section 3;

(m) "notification" means a notification published in the Official Gazette;

(n) "prescribed" means prescribed by rules made under this Act;

(o) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property;

(p) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;

(q) "records" include the records maintained in the form of books or stored in a computer or such other form as may be prescribed;

(r) "Schedule" means the Schedule to this Act;

(s) "scheduled offence" means an offence specified in the Schedule;

(t) "Special Court" means Court of Session designated as Special Court under sub-section (1) of section 42;

(u) "transfer" includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien;

(v) "value" means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person.

(2) Any reference, in this Act or the Schedule, to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provisions of the corresponding law, if any, in force in that area.

CHAPTER II

OFFENCE OF MONEY-LAUNDERING

Offence of
money-
laundering.

3. Whoever—

(a) acquires, owns, possesses or transfers any proceeds of crime; or

(b) enters into any transaction which is related to proceeds of crime either directly or indirectly; or

(c) conceals or aids in the concealment of the proceeds of crime,

commits the offence of money-laundering.

Punishment for
money-
laundering.

4. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine which may extend to five lakh rupees:

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified in Part IV of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted.

CHAPTER III

ATTACHMENT, ADJUDICATION AND CONFISCATION

Attachment of
property
involved in
money-
laundering.

5. (1) Where the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, has reason to believe, on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime;

(b) such person has been charged of having committed a scheduled offence;
and

(c) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 and the Director or the other officer so authorised by him, as the case may be, shall be deemed to be an officer under sub-rule (e) of that Schedule:

43 of 1961.

Provided that no such order of attachment shall be made unless, in relation to an offence under—

(i) Part I, Part II, Part III or Part V of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973; or

2 of 1974.

(ii) Part IV of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

61 of 1985.

(2) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (2) of section 7, whichever is earlier.

(3) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.—For the purposes of this sub-section, "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(4) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

6. (1) The Central Government shall, by notification, appoint one or more persons not below the rank of Joint Secretary to the Government of India as Adjudicating Authority or Adjudicating Authorities to exercise the jurisdiction, powers and authority conferred on an Adjudicating Authority by or under this Act.

Adjudicating
Authority.

(2) The Central Government shall also specify in the notification referred to in sub-section (1) the matters and places in relation to which the Adjudicating Authority may exercise jurisdiction.

7. (1) On receipt of a complaint under sub-section (4) of section 5, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3, he may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government.

Adjudication.

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) The Adjudicating Authority shall, after—

(a) considering the reply, if any, to the notice issued under sub-section (1);

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

(c) taking into account all relevant materials placed on record before him,

by an order record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 and record a finding and such attachment shall—

(a) continue during the pendency of the proceedings relating to any scheduled offence before a court; and

(b) become final after the guilt of the person is proved in the trial court and order of such trial court becomes final.

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the attached property.

(5) Where on conclusion of a trial for any scheduled offence, the person concerned is acquitted, the attachment of the property under sub-section (3) shall cease to have effect.

(6) Where the attachment of any property becomes final under clause (b) of sub-section (3), the Adjudicating Authority shall, after giving an opportunity to the person concerned, make an order confiscating such property.

Vesting of
property in
Central
Government.

8. Where an order of confiscation has been made under sub-section (6) of section 7 in respect of any property of a person, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances:

Provided that where the Adjudicating Authority, after giving an opportunity of being heard to any other person interested in the property attached under this Chapter, is of the opinion that any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrance or lease-hold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrances or lease-hold interest:

Provided further that nothing in this section shall operate to discharge any person from any liability in respect of such encumbrances which may be enforced against such person by a suit for damages.

Management of
properties
confiscated
under this
Chapter.

9. (1) The Central Government may, by order published in the Official Gazette, appoint as many of its officers (not below the rank of a Joint Secretary to the Government of India) as it thinks fit, to perform the functions of an Administrator.

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which an order has been made under sub-section (6) of section 7 in such manner and subject to such conditions as may be prescribed.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government under section 8.

Power
regarding
summons,
production of
documents and
to give
evidence, etc.

10. (1) The Adjudicating Authority shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a financial institution or a company, and examining him on oath;

(c) compelling the production of records;

(d) receiving evidence on affidavits;

(e) issuing commissions for examination of witnesses and documents; and

(f) any other matter which may be prescribed.

(2) All the persons so summoned shall be bound to attend in person or through authorised agents, as the Adjudicating Authority may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

45 of 1860.

(3) Every proceeding under this section shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code.

CHAPTER IV

OBLIGATIONS OF FINANCIAL INSTITUTIONS AND INTERMEDIARIES

11. (1) Every financial institution and intermediary shall—

(a) maintain a record of all transactions, whether such transaction comprise of a single transaction or a series of transactions integrally connected to each other, where such series of transactions take place within a month, exceed the value of twenty-five lakh rupees;

(b) furnish information of transactions referred to in clause (a) to the Commissioner of income-tax having jurisdiction in respect of such financial institution or the intermediary, as the case may be;

(c) verify and maintain the records of the identity of all its clients, in such manner as may be prescribed.

(2) The records referred to in sub-section (1) shall be maintained for a period of five years from the date of cessation of the transactions between the clients and the financial institution or intermediary, as the case may be.

12. (1) The Director may, either of his own motion or on an application made by any authority, officer or person, call for records referred to in sub-section (1) of section 11 and may make such inquiry or cause such inquiry to be made, as he thinks fit.

(2) If the Director, in the course of any inquiry, finds that a financial institution or an intermediary or any of its officers has failed to maintain, or, retain records in accordance with the provisions contained in section 11, then without prejudice to any other action that may be taken under any other provisions of this Act, he may by an order levy a fine on such financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees.

(3) The Director shall forward a copy of the order passed under sub-section (2) to every financial institution or intermediary or person who is a party in the proceedings under that sub-section.

Financial institutions and intermediaries to maintain records.

Powers of Director to impose fine

No civil proceedings against financial institutions, etc., in certain cases.

Procedure and manner of furnishing information by financial institution and intermediary.

13. Save as otherwise provided in section 12, the financial institutions, intermediaries and their officers shall not be liable to any civil proceedings against them for furnishing information under clause (b) of sub-section (1) of section 11.

14. The Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information under sub-section (1) of section 11 for the purpose of implementing the provisions of this Act.

CHAPTER V

SUMMONS, SEARCHES AND SEIZURES, ETC.

Power of survey.

15. (1) Notwithstanding anything contained in any other provisions of this Act, where an authority has reason to believe that an offence under section 3 has been committed, he may enter any place—

(i) within the limits of the area assigned to him; or

(ii) in respect of which he is authorised for the purposes of this section by such other authority, who is assigned the area within which such place is situated,

at which any act constituting the commission of such offence is carried on, and may require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, such act so to—

(i) afford him the necessary facility to inspect such records as he may require and which may be available at such place;

(ii) afford him the necessary facility to check or verify the proceeds of crime or any transaction related to proceeds of crime which may be found therein; and

(iii) furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceedings under this Act.

Explanation.—For the purposes of this sub-section, a place, where an act which constitutes the commission of the offence is carried on, shall also include any other place, whether any activity is carried on therein or not, in which the person carrying on such activity states that any of his records or any part of his property relating to such act are or is kept.

(2) An authority acting under this section may—

(i) place marks of identification on the records inspected by him and make or cause to be made extracts or copies therefrom,

(ii) make an inventory of any property checked or verified by him,

(iii) record the statement of any person present in the place which may be useful for, or relevant to, any proceeding under this Act.

Search and seizure.

16. (1) Where the Director, on the basis of information in his possession, has reason to believe that any person—

- (i) has committed any act which constitutes money-laundering, or
- (ii) is in possession of any proceeds of crime involved in money-laundering, or
- (iii) is in possession of any records relating to money-laundering,

then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—

- (a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;
- (b) break open the lock of any door, box, locker, safe almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;
- (c) seize any record or property found as a result of such search;
- (d) place marks of identification on such record or make or cause to be made extracts or copies therefrom;
- (e) make a note or an inventory of such record or property;
- (f) examine on-oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act;

Provided that no search shall be conducted unless, in relation to an offence under—

(a) Part I, Part II, Part III or Part V of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973; or

(b) Part IV of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

(2) Where any officer subordinate to the Director, upon information obtained during survey under section 15, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence:

Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section.

17. (1) If an authority, authorised in this behalf by the Central Government by general or special order, has reason to believe that any person has secreted about his person or in anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Act, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under this Act.

Search of persons.

(2) Where an authority is about to search any person, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer superior in rank to him or a Magistrate.

(3) If the requisition under sub-section (2) is made, the authority may detain the

2 of 1974.

51 of 1985

person until he can bring him before the Gazetted Officer superior in rank to him or the Magistrate referred to in sub-section (2).

(4) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge such person but otherwise shall direct that search be made.

(5) Before making the search under sub-section (1) or sub-section (4), the authority shall call upon two or more persons to attend and witness the search, and the search shall be made in the presence of such persons.

(6) The authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the list.

(7) No female shall be searched by any one excepting a female.

(8) The authority shall record the statement of the person searched under sub-section (1) or sub-section (4) in respect of the records or proceeds of crime found or seized in the course of the search:

Provided that no search of any person shall be made unless, in relation to an offence under—

(a) Part I, Part II, Part III or Part V of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973; or 2 of 1974.

(b) Part IV of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985. 61 of 1985.

Power to arrest.

18. (1) If the Director, Deputy Director, Assistant Director, or any other officer authorised in this behalf by the Central Government by general or special order, has reason to believe that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested under sub-section (1) shall without unnecessary delay, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction.

Retention of property.

19. (1) Where any property has been seized under section 16 or section 17, and the officer authorised by the Director in this behalf has reason to believe that such property is required to be retained for the purposes of adjudication under section 7, such property may be retained for a period not exceeding three months from the end of the month in which such property was seized.

(2) On expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized unless the Adjudicating Authority permits retention of such property beyond the said period.

(3) The Adjudicating Authority, before authorising the retention of such property beyond the period specified in sub-section (1), shall satisfy himself that the property is *prima facie* involved in money-laundering and the property is required for the purposes of adjudication under section 7. 40

(4) After passing the order of confiscation under sub-section (2) of section 7, the Adjudicating Authority shall direct the release of all properties other than the properties involved in money-laundering to the person from whom such properties were seized.

(5) Notwithstanding anything contained in sub-section (4), the Director or any officer authorised by him in this behalf may withhold the release of any property until filing of appeal under section 25 or forty-five days from the date of order under sub-section (4), whichever is earlier, if he is of the opinion that such property is relevant for the proceedings before the Appellate Tribunal.

20. (1) Where any records have been seized under section 16 or section 17, and the Investigating Officer or any other officer authorised by the Director in this behalf has reason to believe that any of such records are required to be retained for any inquiry under this Act, he may retain such records for a period not exceeding three months from the end of the month in which such records were seized.

Retention of records.

(2) On expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were seized unless the Adjudicating Authority permits retention of such records beyond the said period.

(3) The Adjudicating Authority, before authorising the retention of such records beyond the period mentioned in sub-section (1), shall satisfy himself that the records are required for the purposes of adjudication under section 7.

(4) After the passing of an order of confiscation under sub-section (6) of section 7, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.

(5) Notwithstanding anything contained in sub-section (4), the Director or any officer authorised by him in this behalf may withhold the release of any records until filing of appeal under section 25 or after forty-five days from the date of order under sub-section (4), whichever is earlier, if he is of the opinion that such records are relevant for the proceedings before the Appellate Tribunal.

21. (1) Where any records or property are or is found in the possession or control of any person in the course of a survey or a search, it shall be presumed that—

Presumption as to records or property in certain cases.

(i) such records or property belong or belongs to such person;

(ii) the contents of such records are true; and

(iii) the signature and every other part of such records which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a record, stamped, executed or attested, that it was executed or attested by the person by whom it purports to have been so stamped, executed or attested.

(2) Where any records have been received from any place outside India, duly authenticated by such authority or person and in such manner as may be prescribed, in the course of proceedings under this Act, the Special Court, the Appellate Tribunal or the Adjudicating Authority, as the case may be, shall—

(a) presume, that the signature and every other part of such record which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting; and in the case of a record executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

Presumption in inter-connected transactions.

22. Where money-laundering involves two or more inter-connected transactions and one or more such transactions is or are proved to be involved in money-laundering, then for the purposes of adjudication or confiscation under section 7, it shall be presumed that remaining transactions form part of such inter-connected transactions.

Presumption of culpable mental state.

23. (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this sub-section, "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when, its existence is established by a preponderance of probability.

CHAPTER VI

APPELLATE TRIBUNAL

Establishment of Appellate Tribunal.

24. The Central Government shall, by notification, establish an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority and the authorities under this Act.

Appeals to Appellate Tribunal.

25. (1) Save as otherwise provided in sub-section (3), the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.

(2) Any financial institution or intermediary aggrieved by any order of the Director made under sub-section (2) of section 12, may prefer an appeal to the Appellate Tribunal.

(3) Every appeal preferred under sub-section (1) or sub-section (2) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), or sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director, as the case may be.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be

made by it to dispose of the appeal finally within six months from the date of filing of the appeal.

26. (1) The Appellate Tribunal shall consist of a Chairperson and two other Members.

Composition,
etc., of
Appellate
Tribunal.

(2) Subject to the provisions of this Act,—

(a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson with one or two Members as the Chairperson may deem fit;

(c) the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification specify;

(d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson may transfer a Member from one Bench to another Bench.

(4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.

27. (1) A person shall not be qualified for appointment as Chairperson unless he is or has been a Judge of the Supreme Court or of a High Court.

Qualifications
for appoint-
ment.

(2) A person shall not be qualified for appointment as a Member unless he—

(a) is or has been a Judge of a High Court; or

(b) has been a Member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years; or

(c) has been a member of the Indian Revenue Service and has held the post of Commissioner of Income-tax or equivalent post in that Service for at least three years; or

(d) has been a member of the Indian Economic Service and has held the post of Joint Secretary or equivalent post in that Service for at least three years.

(3) No sitting Judge of the Supreme Court or of a High Court shall be appointed under this section except after consultation with the Chief Justice of India.

28. The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office:

Term of office.

Provided that no Chairperson or other Member shall hold office as such after he has attained,—

(a) in the case of the Chairperson, the age of sixty-eight years;

(b) in the case of any other Member, the age of sixty-five years.

Conditions of
service.

29. The salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or any other Member shall be varied to his disadvantage after appointment.

Vacancies.

30. If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or any other Member, then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

Resignation
and removal.

31. (1) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or any other Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The Chairperson or any other Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity, after an inquiry made by a person appointed by the President in which such Chairperson or any other Member concerned had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Member to act
as Chairperson
in certain
circumstances.

32. (1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, such one of the Members as the Central Government may, by notification, authorise in this behalf, shall act as the Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, such one of Members as the Central Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Staff of
Appellate
Tribunal.

33. (1) The Central Government shall provide the Appellate Tribunal with such officers and employees as that Government may think fit.

(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal shall be such as may be prescribed.

Procedure and
powers of
Appellate
Tribunal.

34. (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

5 of 1908.

(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

1 of 1872.

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a representation for default or deciding it *ex parte*;

(h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and

(i) any other matter, which may be, prescribed by the Central Government.

(3) An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

45 of 1860,

2 of 1974.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

35. Where any Benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

Distribution of
business
amongst
Benches.

36. On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson may transfer any case pending before one Bench, for disposal, to any other Bench.

Power of
Chairperson to
transfer cases.

37. If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

Decision to be
by majority.

Right of appellant to take assistance of legal practitioner and of Government, etc., to appoint presenting officers.

Members, etc., to be public servants.

Civil court not to have jurisdiction.

Appeal to High Court.

38. (1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Appellate Tribunal.

(2) The Central Government or the Director may authorise one or more legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

39. The Chairperson, Members and other officers and employees of the Appellate Tribunal, the Adjudicating Authority, Director and the officers subordinate to him shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

40. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Director, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

41. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Explanation.—For the purposes of this section, “High Court” means—

(i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(ii) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.

CHAPTER VII

SPECIAL COURTS

Special Courts.

42. (1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under section 4 by notification designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

Explanation.—In this sub-section, “High Court” means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.

(2) While trying an offence under this Act, a Special Court may also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

2 of 1974.

Offences triable by Special Courts.

43. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

2 of 1974.

(a) the offence punishable under section 4 shall be triable only by the Special Court constituted for the area in which the offence has been committed; or

(b) a Special Court may, upon perusal of police report of the facts which constitute an offence under this Act or upon a complaint made by an authority authorised in this behalf under this Act take cognizance of the offence for which the accused is committed to it for trial.

2 of 1974. (2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 42.

2 of 1974. 44. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

Offences to be cognizable and non-bailable.

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for a term of imprisonment of more than three years under this Act shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—

(i) the Director; or

(ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

2 of 1974. (2) The limitation on granting of bail specified in clause (b) of sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

2 of 1974. 45. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor:

Application of the Code of Criminal Procedure, 1973 to proceedings before Special Court.

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years, under the Union or a State, requiring special knowledge of law.

2 of 1974. (3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and the provisions of the Code shall have effect accordingly.

2 of 1974. 46. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973, on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Appeal and revision.

CHAPTER VIII

AUTHORITIES

47. There shall be the following classes of authorities for the purposes of this Act, namely:—

Authorities under this Act.

(a) Director or Additional Director or Joint Director,

(b) Deputy Director,

(c) Assistant Director, and

(d) such other class of officers as may be appointed for the purposes of this Act.

Appointment
and powers of
authorities and
other officers.

48. (1) The Central Government may appoint such persons as it thinks fit to be authorities for the purposes of this Act.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise the Director or an Additional Director or a Joint Director or a Deputy Director or an Assistant Director appointed under that sub-section to appoint other authorities below the rank of an Assistant Director.

(3) Subject to such conditions and limitations as the Central Government may impose, an authority may exercise the powers and discharge the duties conferred or imposed on it under this Act.

Power of
authorities
regarding
summons,
production of
documents and
to give
evidence, etc.

49. (1) The Director shall, for the purposes of section 12, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

5 of 1908.

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a financial institution or a company, and examining him on oath;
- (c) compelling the production of records;
- (d) receiving evidence on affidavits;
- (e) issuing commissions for examination of witnesses and documents; and
- (f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.

45 of 1860.

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not—

- (a) impound any records without recording his reasons for so doing; or
- (b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director.

Jurisdiction of
authorities.

50. (1) The authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to such authorities by or under this Act or the rules framed thereunder in accordance with such directions as the Central Government may issue for the exercise of powers and performance of the functions by all or any of the authorities.

(2) In issuing the directions or orders referred to in sub-section (1), the Central Government may have regard to any one or more of the following criteria, namely:—

- (a) territorial area;
- (b) classes of persons;

(c) classes of cases; and

(d) any other criterion specified by the Central Government in this behalf.

51. The Central Government may, from time to time, issue such orders, instructions and directions to the authorities as it may deem fit for the proper administration of this Act and such authorities and all other persons employed in execution of this Act shall observe and follow such orders, instructions and directions of the Central Government:

Power of Central Government to issue directions, etc.

Provided that no such orders, instructions or directions shall be issued so as to—

(a) require any authority to decide a particular case in a particular manner; or

(b) interfere with the discretion of the Adjudicating Authority in exercise of his functions.

52. The Central Government may, by a special or general order, empower any officer of the Central Government or of a State Government to act as an authority under this Act.

Empowerment of certain officers.

53. The following officers are hereby empowered and required to assist the authorities in the enforcement of this Act, namely:—

Certain officers to assist in inquiry, etc.

(a) officers of the Customs and Central Excise Departments;

61 of 1985.

(b) officers appointed under sub-section (1) of section 5 of the Narcotic Drugs and Psychotropic Substances Act, 1985;

43 of 1961.

(c) income-tax authorities under sub-section (1) of section 117 of the Income-tax Act, 1961;

42 of 1956.

(d) officers of the stock exchange recognised under section 4 of the Securities Contracts (Regulation) Act, 1956;

2 of 1934.

(e) officers of the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934;

(f) officers of Police;

46 of 1973.

(g) officers of enforcement appointed under section 4 of the Foreign Exchange Regulation Act, 1973;

15 of 1992.

(h) officers of the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;

(i) such other officers of the Central Government, State Government, local authorities or banking companies as the Central Government may, by notification, specify, in this behalf.

CHAPTER IX

MISCELLANEOUS

54. Any authority or officer exercising powers under this Act or any rules made thereunder, who,—

Punishment for vexatious search.

(a) without reasonable ground of suspicion, searches or causes to be searched any building or place; or

(b) vexatiously detains or searches or arrests any person,

shall for a every such offence be liable on conviction for imprisonment for a term which may extend to three months or fine which may extend to ten thousand rupees or both.

Punishment
for false
information.

55. Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which may extend to three months or fine which may extend to ten thousand rupees or both.

Cognizance of
offences.

56. No court shall take cognizance of any offence under section 54 or section 55 except with the previous sanction of the Central Government.

Code of
Criminal
Procedure,
1973 to apply.

57. The provisions of the Code of Criminal Procedure, 1973 shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrests, searches and seizures, attachment confiscations, investigations, prosecution and all other proceedings under this Act.

2 of 1974.

Disclosure of
information.

58. The Director or any other authority specified by him by a general or special order in this behalf may furnish or cause to be furnished to—

(i) any officer, authority or body performing any functions under any law relating to imposition of any tax, duty or cess or to dealings in foreign exchange, or prevention of illicit traffic in the Narcotic Drugs and Psychotropic Substances Act, 1985; or

61 of 1985.

(ii) such other officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify by notification in the Official Gazette in this behalf,

any information received or obtained by such Director or any other authority, specified by him in the performance of their functions under this Act, as may, in the opinion of the Director or the other authority so specified by him, be necessary for the purpose of the officer, authority or body specified in clause (i) or clause (ii) to perform his or its functions under that law.

Bar of legal
proceedings.

59. No suit, prosecution or other legal proceeding shall lie against the Central Government or any authority or any other person exercising any power or discharging any functions or performing any duties under this Act for anything which is done or intended to be done under this Act or any rule or instruction or direction made thereunder.

Notice, etc.,
not to be
invalid on
certain
grounds.

60. No notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons, order, document or other proceeding if such notice, summons, order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

Recovery of
fines.

61. Where any fine imposed on any person under section 12 is not paid within six months from the day of imposition of fine, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.

43 of 1961.

Offences by
companies.

62. (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation—For the purposes of this section,—

(i) "company" means any body corporate and includes a firm or other association of individuals; and

(ii) "director", in relation to a firm, means a partner in the firm.

63. The provisions of this Act shall have effect notwithstanding anything is inconsistent therewith contained in any other law for the time being in force.

Act to have
overriding
effect

64. (1) Where—

(a) any property of a person has been attached under section 7 and no appeal against the order attaching such property has been preferred; or

(b) any appeal has been preferred to the Appellate Tribunal, and—

(i) in a case referred to in clause (a), such person dies or is adjudicated an insolvent before preferring an appeal to the Appellate Tribunal; or

(ii) in a case referred to in clause (b), such person dies or is adjudicated an insolvent during the pendency of the appeal,

then, it shall be lawful for the legal representatives of such person or the official assignee or the official receiver, as the case may be, to prefer an appeal to the Appellate Tribunal or as the case may be, to continue the appeal before the Appellate Tribunal, in place of such person and the provisions of section 25 shall, so far as may be, apply, or continue to apply, to such appeal.

Continuation
of proceedings
in the event of
death or
insolvency

(2) Where—

(a) after passing of a decision or order by the Appellate Tribunal, no appeal has been preferred to the High Court under section 41; or

(b) any such appeal has been preferred to the High Court,—

then—

(i) in a case referred to in clause (a), the person entitled to file the appeal dies or is adjudicated an insolvent before preferring an appeal to the High Court, or

(ii) in a case referred to in clause (b), the person who had filed the appeal dies or is adjudicated an insolvent during the pendency of the appeal before the High Court,

then, it shall be lawful for the legal representatives of such person, or the official assignee or the official receiver, as the case may be, to prefer an appeal to the High Court or to continue the appeal before the High Court in place of such person and the provision of section 41 shall, so far as may be, apply or continue to apply to such appeal.

(3) The powers of the official assignee or the official receiver under sub-section (1) or sub-section (2) shall be exercised by him subject to the provisions of the Presidency-towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920, as the case may be.

5 of 1909.
5 of 1920.

Power to make rules.

65. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form in which records referred to in this Act may be maintained;

(b) the manner in which and the conditions subject to which the properties confiscated may be received and managed under sub-section (2) of section 9;

(c) the additional matters in respect of which the Adjudicating Authority may exercise the powers of a civil court under clause (f) of sub-section (1) of section 10;

(d) the manner in which records may be verified and maintained by financial institutions and intermediaries under clause (c) of sub-section (1) of section 11;

(e) the procedure and the manner of maintaining and furnishing information under sub-section (1) of section 11 as required under section 14;

(f) the rules relating to search and seizure under sub-section (1) of section 16;

(g) the manner in which records authenticated outside India may be received under sub-section (2) of section 21;

(h) the form of appeal and the fee for filing such appeal, under sub-section (3) of section 25;

(i) the salary and allowances payable to and the other terms and conditions of service of the Chairperson and Members of the Appellate Tribunal under section 29;

(j) the salaries and allowances and of the conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 33;

(k) the additional matters in respect of which the Appellate Tribunal may exercise the powers of a civil court under clause (i) of sub-section (2) of section 34;

(l) the additional matters in respect of which the authorities may exercise powers of a civil court under clause (f) of sub-section (1) of section 49;

(m) rules relating to impounding and custody of records under sub-section (5) of section 49;

(n) any other matter which is required to be, or may be, prescribed.

Laying of rules

66. Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Removal of difficulty.

67. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, do anything not inconsistent with such provisions of this Act for the purpose of removing the difficulty;

Provided that no such order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

THE SCHEDULE

[See section 2(s)]

PART I

OFFENCES UNDER THE INDIAN PENAL CODE

Section	Description of offence
121	Waging, or attempting to wage war, or abetting waging of war, against the Government of India.
121A	Conspiracy to commit offences punishable under section 121 against the State.
302	Murder.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with the intention of causing death.
307	Attempt to murder.
308	Attempt to commit culpable homicide.
327	Voluntarily causing hurt to extort property, or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of the offence.
329	Voluntarily causing grievous hurt to extract property, or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of the offence.
364A	Kidnapping for ransom, etc.
384 to 389	Offences relating to extortion.
392 to 402	Offences relating to robbery and dacoity.
467	Forgery of a valuable security, will or authority to make or transfer any valuable security, or to receive any money, etc.
477A	Falsification of accounts.
489A	Counterfeiting currency notes or bank notes.
489B	Using as genuine, forged or counterfeit currency notes or bank notes.

PART-II

OFFENCES UNDER THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

Section	Description of offence
5	Procuring, inducing or taking person for the sake of prostitution.
6	Detaining a person in premises where prostitution is carried on.
8	Seducing or Soliciting for purpose of prostitution.
9	Seduction of a person in custody.

PART III
OFFENCES UNDER THE ARMS ACT, 1959

Section	Description of offence
25	<p>To manufacture, sell, transfer, convert, repair or test or prove or expose or offer for sale or transfer or have in possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of section 5 of the Arms Act, 1959.</p> <p>To acquire, have in possession or carry any prohibited arms or prohibited ammunition in contravention of section 7 of the Arms Act, 1959.</p> <p>Contravention of section 24A of the Arms Act, 1959 relating to prohibition as to possession of notified arms in disturbed areas, etc.</p> <p>Contravention of section 24B of the Arms Act, 1959 relating to prohibition as to carrying of notified arms in or through public places in disturbed areas.</p>
26	<p>To do any act in contravention of any provisions of section 3, 4, 10 or 12 of the Arms Act, 1959 in such manner as specified in sub-section (1) of section 26 of the said Act.</p> <p>To do any act in contravention of any provisions of section 5, 6, 7 or 11 of the Arms Act, 1959 in such manner as specified in sub-section (2) of section 26 of the said Act.</p>
27	Use of arms or ammunitions in contravention of section 5 or use of any arms or ammunition in contravention of section 7 of the Arms Act, 1959.
28	Use and possession of fire arms or imitation fire arms in certain cases.
29	Knowingly purchasing arms from unlicensed person or for delivering arms, etc., to person not entitle to possess the same.
30	Contravention of any condition of a licence or any provisions of the Arms Act, 1959 or any rule made thereunder.

PART IV
OFFENCES UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

Section	Description of offence
15	Contravention in relation to poppy straw.
18	Contravention in relation to opium poppy and opium.
20	Contravention in relation to cannabis plant and cannabis.
22	Contravention in relation to psychotropic substances.
23	Illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances.
24	External dealings in narcotic drugs and psychotropic substances in contravention of section 12 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
25A	Contravention of orders made under section 9A of the Narcotic Drugs and Psychotropic Substances Act, 1985.
27A	Financing illicit traffic and harbouring offenders.
29	Abetment and criminal conspiracy.

PART V

OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988

Section	Description of offence
7	Public servant taking gratification other than legal remuneration in respect of an official Act.
8	Taking gratification in order, by corrupt or illegal means, to influence public servant.
9	Taking gratification for exercise of personal influence, with public servant.
10	Abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988.

STATEMENT OF OBJECTS AND REASONS

It is being realised, world over, that money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. Some of the initiatives taken by the international community to obviate such threat are outlined below:—

(i) The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a party, calls for preventing of laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds derived from such offence.

(ii) The Basle statement of principles, enunciated in 1989, outlined basic policies and procedures that banks should follow in order to assist the law enforcement agencies in tackling the problem of money-laundering.

(iii) The Financial Action Task Force held in Paris from 14th to 16th July, 1989, to examine the problem of money-laundering has made forty recommendations, which provide the foundation material for comprehensive legislation to combat the problem of money-laundering. The recommendations were classified under various heads. Some of important heads are—

(i) declaration of laundering of monies earned through serious crimes, a criminal offence;

(ii) to work out modalities of disclosure by financial institutions regarding reportable transactions;

(iii) confiscation of the proceeds of crime;

(iv) declaring money-laundering to be an extraditable offence; and

(v) promoting international co-operation in investigation of money-laundering.

(iv) The Political Declaration and Global Programme of Action adopted by United Nations General Assembly by its Resolution No. S-17/2 of 23rd February, 1990, *inter alia*, calls upon the member States to develop mechanism to prevent financial institutions from being used for laundering of drug related money and enactment of legislation to prevent such laundering.

(v) The United Nations in the Special Session on Countering World Drug Problem Together concluded on 8th to 10th June, 1998 has made another declaration regarding the need to combat money-laundering. India is a signatory to this declaration.

2. In view of the above, there is an urgent need for the enactment of a comprehensive legislation providing, *inter alia*, for preventing and punishing offences relating to money-laundering and connected activities, confiscation of proceeds of crime, disclosure of such transactions by financial institutions, setting up of agencies and mechanisms for co-ordinating measures necessary for combating money-laundering, etc.

3. The Bill seeks to achieve the above objects. The Notes on clauses explain the various provisions of the Bill.

NEW DELHI;
The 28th July, 1998.

YASHWANT SINHA.

Notes on Clauses

Clause 3 proposes to define the offence of money-laundering.

The term "money-laundering" is sought to be defined in an exhaustive manner. The term will mean engaging directly or indirectly in a transaction or a series of transactions including possessing, concealing, disguising, transferring, converting, carrying or disposing of any property which is or represents in any manner the proceeds or gains of a crime within India or outside India. The essential ingredients of the definitions are that,—

- (i) a crime has been committed;
- (ii) there are proceeds of or gains from the crime; and
- (iii) there is a transaction in respect of the proceeds of the gains.

Clause 4 seeks to provide punishment for money-laundering. It is proposed that the offence shall carry punishment of rigorous imprisonment for a period of not less than three years but not more than seven years and fine up to five lakh rupees. The maximum punishment may extend to ten years rigorous imprisonment instead of seven years rigorous imprisonment.

However, where the proceeds of crime involved in money-laundering relates to an offence specified in Part IV of the schedule.

Clause 5 seeks to provide for attachment of property involved in money-laundering. The Director is sought to be empowered to attach the property provided that he has reason to believe that a person is in possession of property involved in money-laundering or he is dealing in such property. The violations of the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 constitute the most serious offences under the proposed Bill and India has international obligations in this regard. Therefore, the Director is sought to be empowered to attach the laundered property in drug related cases soon after the case regarding the offence is sent by the police officer or a complaint is filed by the designated officer before the court for taking cognizance of the offence. However, in other cases, some safeguards need to be incorporated in the proposed legislation. It is proposed that in such cases, the attachment may be made only after, based on the outcome of the investigations, a report has been forwarded under section 173 of the Code of Criminal Procedure, 1973 before the competent Magistrate. It is proposed that the attachment shall remain in force for a period not exceeding ninety days or the period ending on the date of order of adjudication made in respect of the property representing the proceeds of crime, whichever is earlier. The attachment shall, however, not prevent the person interested in the enjoyment of the property from such enjoyment. It is also proposed that the Director or any other officer who provisionally attaches any property under the proposed Act shall within a period of thirty days from such attachment file a complaint before the Adjudicating Authority.

Clause 6 proposes to set-up Adjudicating Authorities so as to adjudicate in a quasi-judicial manner whether the attached property is involved in money-laundering or not. It is sought that the Central Government shall appoint one or more persons not below the rank of Joint Secretary to the Government of India as Adjudicating Authorities and specify the matter and places where they may exercise jurisdiction.

Clause 7 proposes to lay down the procedure for adjudication. After filing of a complaint by the Director or any other officer before the Adjudicating Authority, if the Adjudicating Authority has reason to believe that any person has committed an offence of money-

laundering, he may serve a notice of minimum thirty days on such a person asking him to indicate the sources of his income, earnings, or assets by which he has acquired the attached property and to show-cause as to why all or any of such acquired properties may not be declared to be properties involved in money-laundering and confiscated by the Central Government. It is also proposed to be provided that where the attached property is held by a person on behalf of any other person then a copy of such notice shall also be served upon the other person. Where the property is held jointly by more than one person, then such notice shall be served to the person holding the property. Sub-clause (2) proposes that the Adjudicating Authority shall after considering the reply, if any, to the notice issued by it, and after hearing the aggrieved person and the Director or any other authorised officer and after taking into account all relevant materials placed on record, record a finding whether the attached properties are involved in money-laundering or not. It is sought to be provided that where the property is claimed by any other person to whom the notice is issued then such person should also be given an opportunity of being heard to prove that the property is not involved in money-laundering. Sub-clause (3) seeks to provide that if the Adjudicating Authority adjudicates that the property is involved in money-laundering, he shall confirm in writing, the attachment. Thereafter the attachment shall continue during the pendency of the proceedings relating to any scheduled offence before a Court and shall become final after the guilt of the person is proved in the trial Court and the order of such trial Court becomes final. Sub-clause (4) seeks to provide that where the provisional order of attachment is confirmed by the Adjudicating Authority then the Director or any other authorised officer shall forthwith take the possession of the attached property. Sub-clause (5) provides that where the concerned person is acquitted on the conclusion of trial for any scheduled offence then the attachment of property shall cease to have effect. Sub-section (6) provides that once a crime relating to a property is proved in the competent court of law, the Adjudicating Authority shall pass an order in writing confiscating such property after hearing the concerned persons.

Clause 8 seeks to provide that once a crime relating to a property is proved in the competent court of law, the Adjudicating Authority shall pass an order in writing confiscating such property after hearing the concerned persons. It is further sought to be provided that if the Adjudicating Authority is of the opinion that any encumbrance of the property or lease hold interest has been created with a view to defeat the provisions of Chapter III the Adjudicating Authority may declare such encumbrance or lease hold interest to be void. However, such an order may be passed only after giving the person interested in the property an opportunity of being heard. It is proposed to be further provides that nothing in clause 8 shall discharge any person from any liability in respect of such encumbrances which may be enforced against such person by a suit for damages.

Clause 9 proposes to make provisions for management of properties confiscated under the proposed Act. Sub-clause (1) seeks to authorise the Central Government to appoint by notification in the Official Gazette officers not below the rank of a Joint Secretary to the Government to perform the functions of an Administrator. Sub-clause (2) proposes that the Administrator so appointed shall receive and manage the confiscated property according to conditions that may be prescribed by rules. Sub-clause (3) seeks to provide that the Administrator shall also take such measures as the Central Government may direct to dispose of the property which is vested in the Central Government under clause 8.

Clause 10 seeks to introduce provisions conferring power regarding summons, production of documents, giving evidence, etc., on the Adjudicating Authority. As per sub-clause (1), is proposed that the Adjudicating Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of discovery and inspection, enforcing the attendance of any person, compelling the production of records, receiving evidence on affidavits, issuing commissions for ex-

amination of witnesses and documents and any other matters which may be prescribed. It is proposed that the persons so summoned shall be bound to attend in person or through authorised agents and shall also be bound to state the truth upon any subject respecting which they are examined and make statement or produce the required documents. Sub-clause (3) proposes that every proceeding under this clause shall be deemed to be judicial proceedings within the meanings of section 193 and 228 of the Indian Penal Code.

Clause 11 proposes to make it obligatory for every financial institution and intermediary to maintain a record of all transactions or series of interconnected transactions exceeding the value of rupees twenty-five lakhs held within a month.

It is also proposed that they would be required to furnish information of these transactions to the Commissioner of Income-tax having jurisdiction over such financial institutions or the intermediaries. The financial institutions and intermediaries would also be required to verify and maintain the records of the identity of all its clients in the prescribed manner for a period of five years from the date of cessation of transactions between the clients and financial institutions.

Clause 12 proposes to empower the Director to impose a fine on the financial institution if the institution has failed to maintain or retain records in accordance with the provisions of clause 11. The Director may levy a fine on such financial institution of not less than rupees ten thousand but not exceeding one lakh rupees. A copy of such order levying the fine will be forwarded to every financial institution or intermediary or other person who is a party in the proceedings.

Clause 13 seeks to provide that the financial institutions intermediaries and their offices will be provided immunity from any civil or criminal liability, under any existing law, arising out of disclosures of informations under clause 11.

Clause 14 seeks to authorise the Central Government, in consultation with the Reserve Bank of India to prescribe the procedures, etc., for reporting of the transactions.

Clause 15 seeks to empower the Assistant Director or the Deputy Director to carry out a survey of the premises in case where he has reason to believe that money-laundering is being carried on. The powers are similar to the powers granted to the Income-tax authorities under section 133A of the Income-tax Act, 1961. It also seeks to empower the officer authorised to conduct the survey to require any proprietor, employee or any other person who is attending to the matters at the place of survey to assist the officer in affording him the facility to inspect the required records, to check or verify the proceeds of crime or any transactions related to the proceeds of crime which may be found at the site of survey and to furnish the required information. In these proceedings, while marks of identification may be placed on the records inspected or copies and extracts, etc., may be taken from the books and documents, and an inventory of cash and valuables may be drawn and the statements may be recorded.

Clause 16 empowers the Director to authorise search and seizure operations in a premises provided that he has reason to believe that any person has committed an act of money-laundering, or is in possession of money, bullion or valuables, etc., involved in money-laundering, or is in possession of records pertaining to money-laundering. The Director may authorise any officer subordinate to him to enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept, and to break open any lock where the keys are not available, to seize any record or property found as a result of such search, to place marks of identifica-

tion on such records, take their extracts or copies, make a note or an inventory of such record or property and examine on oath any person who is found to be in possession or in control of any record or property.

It is further sought to be provided that such search may be authorised in drug related cases soon after the case regarding the offence is sent by the police officer or a complaint is filed by the designated officer before the court for taking cognizance of the offence. In other cases it is proposed that search may be authorised only after, based on the outcome of the investigations, a report has been forwarded under section 173 of the Code of Criminal Procedure before the competent magistrate.

It is further proposed vide sub-clause (2) that if in the course of survey it is found that evidence of money-laundering is available, which is likely to be tampered with, then the officer may seize the evidence on the footing that he has been authorised by the Director to carry out a search and seizure operation. However, he will have to record his reasons for taking this action in writing and communicate the same along with the result of search to the Director immediately after the search.

Clause 17 proposes to confer the power of search of a person on an officer authorised in this behalf by the Central Government, if he has reason to believe that such person is in possession of or has secreted about his person any document, money, bullion, etc., which will be useful for any proceeding under the proposed legislation. Sub-clause (2) proposes that where an authority is about to search any person and that person so requires, then he shall take such person without unnecessary delay to the nearest Gazetted Officer superior in rank to him or to a Magistrate. Sub-clause (3) authorises the authority to detain the person until he can bring him before the Gazetted Officer superior in rank to him or to a Magistrate. Sub-clause (4) provides that if the Gazetted Officer or the Magistrate before whom such person is brought, sees no reasonable ground for search then he may discharge such person but direct that the search may be made. Sub-clause (5) provides that before making a search of a person the authority shall call upon two or more persons to attend and witness the search. Sub-clause (6) provides that the authority shall prepare a list of records or properties seized in the course of the search and obtain the signatures of the witnesses on this list. Sub-clause (7) provides that no female shall be searched by anyone except another female.

Sub-clause (8) proposes to provide that such a search may be authorised in drug related cases soon after the case regarding the offence is sent by the police officer or a complaint is filed by the designated officer before the court for taking cognizance of the offence. In other cases it is proposed that search may be authorised only after, based on the outcome of investigations, a report has been forwarded under section 173 of the Code of Criminal Procedure before the competent magistrate.

Clause 18 proposes to empower the Director, the Deputy Director, the Assistant Director or any other authorised officer to arrest a person if he has reason to believe that the person is guilty of an offence under the proposed legislation. Necessary safeguards such as furnishing the grounds of arrest and production before the Judicial Magistrate or a Metropolitan Magistrate without unnecessary delay are also sought to be provided.

Clause 19 proposes to make provisions regarding retention of property seized in the course of search of premises or persons. The property seized during search of premises or search of persons, if required for adjudication can, generally speaking, be retained for a period not exceeding three months. If retention is required for a longer period, specific permission of the Adjudicating Authority has to be taken. Before giving such permission the Adjudicating Authority has to satisfy himself that the aforesaid assets are involved in

money-laundering and they are required for adjudication. After the date of passing of the order of confiscation, the Adjudicating Authority, shall direct the release of such assets which are not involved in money-laundering. However, the director is sought to be empowered under sub-clause (5) to retain the assets even beyond the date of order of adjudication where an appeal is filed against the order within forty-five days from the date of the order of the Adjudicating Authority.

Clause 20 proposes similar provisions in respect of retention of records seized during search under clause 16 or 17.

Clause 21 seeks to provide a presumption regarding books of account and money, bullion, etc., seized in the course of search and seizure operations. It shall be presumed that the aforesaid belong to the person from whose possession or control the books or money, etc., were seized. It shall also be presumed that the books, etc., contain the true account of the transactions mentioned therein. Further, in case a document is received in the prescribed manner from outside India, it shall be presumed that the handwriting and signatures, etc., are correct and that it has been properly, recorded and conveyed, etc.

Clause 22 seeks to provide a presumption that where money-laundering involves two or more interconnected transactions and one or more such transaction is proved to be involved in money-laundering, then for the purposes of adjudication or confiscation, it shall be presumed that remaining transactions form part of such interconnected transactions.

Clause 23 seeks to provide the presumption regarding the existence of "mens- rea" being culpable mental state of the accused in civil and criminal proceedings but the accused will be at liberty to rebut this presumption as a defence.

Clause 24 seeks to authorise the Central Government to establish an Appellate Tribunal by notification to hear appeals against the orders of the Adjudicating Authority and the authorities under this Act.

Clause 25 seeks to provide that the Director or any person aggrieved may prefer an appeal to the Appellate Tribunal against orders of adjudication, orders levying fines and orders of retention of valuables and books, etc.

Sub-clause (2) provides that an appeal may be preferred to the Appellate Tribunal by a Financial Institution or an intermediary aggrieved by any order of the Director.

Sub-clause (3) provides that the appeal is to be filed within forty-five days of receipt of the order. However, the Appellate Tribunal will be empowered to entertain an appeal beyond this statutory period on showing of good and sufficient reasons.

Sub-clause (4) proposes that the Appellate Tribunal after hearing the rival parties, may pass such orders as it thinks fit.

Sub-clause (5) proposes that the Appellate Tribunal shall send a copy of every order passed by it to the parties of the appeal and to the concerned Appellate Tribunal and the Director.

Sub-clause (6) proposes that the Appellate Tribunal shall deal with the appeal filed before it as expeditiously as possible and endeavour to dispose it in six months.

Clause 26 details the composition of the Appellate Tribunal. It is sought to be provided that the AT shall have a Chairperson and two other members.

Sub-clause (2) proposes that the jurisdiction of the Appellate Tribunal may be exercised by its benches which may be constituted by its Chairperson with one or two members. It is proposed that the benches of the Appellate Tribunal shall ordinarily sit in New Delhi or at such other places as may be notified by the Central Government in consultation with the Chairperson. It is also sought to be provided that the Central Government may notify the area of jurisdiction of each bench of Appellate Tribunal. Sub-clause (3) proposes that the Chairman may transfer a member from one Bench to another. Sub-clause (4) proposes that if any stage of the hearing of any case it appears to the Chairperson or to the Member that the case ought to be heard by a bench consisting of two members the case may be transferred accordingly by the Chairperson.

Clause 27 proposes to detail the qualifications for appointment of Chairpersons and Members of the Appellate Tribunal. The Chairperson shall be a sitting or retired Judge of the Supreme Court or a High Court and other members shall be either a sitting or retired Judge of the High Court or a member of the Indian Legal Service who has held a post in Grade I of that Service for atleast three years, or has been a member of the Indian Revenue Service and has held the post of Commissioner of Income-tax or equivalent for atleast three years or has been a member of the Indian Economic Service and has held the post of Joint Secretary or equivalent for atleast three years. It is also proposed to be provided that no sitting Judge of the Supreme Court or a High Court shall be appointed as a Chairperson or a member of the Appellate Tribunal except after consultation with the Chief Justice of India.

Clause 28 proposes that the Chairperson or other Member shall hold office for a term of five years. However, it is provided that no Chairperson shall hold office after attaining the age of sixty-eight years and Member after attaining the age of sixty-five years.

Clause 29 proposes that the salaries and allowances and the terms and conditions of the service of the Chairperson and Members would be as prescribed. It is provided that the salary and allowances and other terms and conditions would not be varied so as to the disadvantage of such Chairperson or Member.

Clause 30 proposes that if there is a vacancy for reasons other than temporary office then the Central Government may appoint another person as Chairperson or Member in accordance with the provisions of the proposed Act and the proceedings may be continued before the Appellate Tribunal from the State at which the vacancy is filled.

Clause 31 provides that the Chairperson or any other Member may resign his office by giving a notice in writing to the Central Government. It is also provided that such Chairperson or Member unless permitted by the Central Government to relinquish his office would continue to hold office until the expiry of three months from the date of receipt of notice or until a successor is appointed whichever is earlier. Sub-clause (2) provides that a Chairperson or any other person shall not be removed by office except by an order made by the Central Government on the grounds of proved misbehaviour or incapacity and after an enquiry made by a person appointed by the President.

Clause 32 provides for circumstances in which a Member can act as a Chairperson of the Tribunal. When there is a vacancy in the office of the Chairperson by that resignation or otherwise, the Central Government may authorise one of the members to act as a Chairperson till the new incumbent is appointed. Sub-clause (2) provides that when the Chairperson is unable to discharge his functions owing to absence illness or any other cause, the Central Government may notify one Member to discharge the functions of the Chairperson till the Chairperson resume his duties.

Clause 33 proposes to empower the Central Government to provide the officers and employees of the Appellate Tribunal who shall discharge their function under the general superintendence of the Chairperson. The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal shall be as prescribed.

Clause 34 seeks to provide for the procedure and power of the Appellate Tribunal.

Sub-clause (1) proposes that the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by principle of natural justice and subject to other provisions of the Act, the Appellate Tribunal shall have powers to regulate its own procedure. Sub-clause (2) proposes that the Appellate Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of summoning and reporting the attendance of any person and examining him on oath, requiring the discovery and production of documents, receiving evidence on affidavits, requisitioning any public record or document, issuing commissions for the examination of witness or document, reviewing its decision, dismissing a representation for default or deciding it *ex parte*, setting aside any order or in any other matter which may be prescribed. Sub-clause (3) provides that an order made by the Appellate Tribunal under the proposed Act shall be executable by the Appellate Tribunal. As a decree of civil court and for this purpose the Appellate Tribunal shall have all the powers of a civil court. Sub-clause (4) proposes that notwithstanding the provision of sub-clause (3) the Appellate Tribunal, may transmit any order made by it to a civil court having local jurisdiction for execution of the order as if it were a decree made by that Court. Sub-clause (5) proposes that all the proceedings before the Appellate Tribunal shall be deemed to be judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

Clause 35 provides that the Chairperson may by notification make provisions regarding distribution of work of the Appellate Tribunal among the Benches.

Clause 36 provides to empower the Chairperson to transfer any case pending before one Bench for disposal to another bench if any of the parties make an application in this behalf and after giving notice and hearing to the parties. The Chairperson may transfer any case from one bench to another on his own motion also.

Clause 37 provides that the decision of the Appellate Tribunal shall be by majority. It is also provided that if the Member of the Bench consisting of two Members differ in opinion than they shall state the point or points of difference and make a reference to the Chairperson who may hear the disputed points himself or make a reference to one or more other members of the Appellate Tribunal. The decision on such points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal including the members who have first heard the case.

Clause 38 seeks to grant the right of appellant to either appear in person or to take the assistance of legal petitioner of his choice to present his case before the Appellate Tribunal. Sub-clause (2) authorises the Central Government of the Director to authorise one or more legal practitioner or any of its officers to act as presenting officer. Every person so authorised may present the case with respect to appeal before the Appellate Tribunal.

Clause 39 proposes that the Chairperson, Members, other officers and employees of the Appellate Tribunal, the adjudicating authority, Director and the officers subordinate to him shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 40 seeks to provide that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of matter for which the Director, Adjudicating Authority, or the Appellate Tribunal is empowered under the proposed Act. It is also proposed that no injunction shall be granted by any court or any other authority in respect of action taken or to be taken in pursuance of any power conferred by or under this Act.

Clause 41 proposes that any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of commu-

notification of decision or order of the Appellate Tribunal on any question of law. It is proposed to be provided that the High Court may extend the period for filing the appeal. It is explained that for the purposes of this section, High Court means the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carry on business or personally work for gains. Where the Central Government is the aggrieved party, then the High Court within whose jurisdiction the respondent ordinarily resides or carries on business or personally works for gain, then that High Court shall have jurisdiction.

Clause 42 seeks to provide that the Central Government shall in consultation with the Chief Justice of the High Court designate by way of notification one or more court of session as special court for trial of offences punishable under clause 4 of this proposed Act. The area and the class or group of cases in respect of which such special court shall exercise their jurisdiction would also be specified in the notification. Sub-clause (2) proposes that if the accused is charged in respect of any other offence, then the special court may try the same as under the Code of Criminal Procedure, 1973.

Clause 43 proposes that notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence punishable under clause 4 of this Bill shall be triable only by the Special Court constituted for the area in which the offence has been committed. However, the Special Court may upon perusal of the police report of the facts of the case or the complaint made by an authority take cognizance of the offence for which the accused in committed to it for trial. Sub-clause (2) proposes that this clause shall not affect the special power of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973.

Clause 44 proposes that notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence punishable under this Act shall be cognizable and no person accused of an offence punishable for a term of more than three years imprisonment under this Act shall be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release and where the Public Prosecutor opposes the application and the Court is satisfied that their reasonable grounds for believing that the accused is not guilty of such offence and is not likely to commit any offence while on bail. It is also proposed to be provided that the Special Court shall not take cognizance of any offence punishable under clause 4 except on a complaint in writing made by the Director or an officer authorised by the Central Government in this behalf. Sub-clause (2) specifically states that the limitation on granting of bail is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law being in force on granting of bail.

Clause 45 seeks to provide that the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for these purposes that Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court shall be deemed to be Public Prosecutors. This provision applies in situations save as otherwise provided in the proposed Act. It is also provided that the Central Government may appoint for any case or class of cases a Special Public Prosecutor. Sub-clause (2) proposes that to be appointed as a Public Prosecutor or a Special Public Prosecutor a person should have been in practice as an advocate for not less than seven years, under the Union or a State requiring special knowledge of Law. Sub-clause (3) proposes that every person appointed as Public Prosecutor or a Special Public Prosecutor shall be deemed to be a Public Prosecutor within the meaning of section 2(u) of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly.

Clause 46 provides that High Court may exercise all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within its limits.

Clause 47 proposes that there will be the following classes of authority for the purposes of this legislation:—

- (i) Director or Additional Director or Joint Director
- (ii) Deputy Director
- (iii) Assistant Director
- (iv) Such other classes of officers as may be appointed.

Clause 48 proposes that the Central Government may appoint such persons as it thinks fit to be the authorities for the purpose of the proposed legislation. Sub-clause (2) proposes that the Central Government may authorise the Director or an Additional Director or a Joint Director or a Deputy Director or an Assistant Director to appoint other authorities below the rank of an Assistant Director. Sub-clause (3) proposes that subject to such conditions and limitations as the Central Government may impose, an authority may exercise the powers and discharge the duties conferred or imposed on it under the proposed Act.

Clause 49 proposes to provide that for the purposes of clause 12, the Director shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of discovery and inspection; enforcing the attendance of any person, including any officer of a financial institution or a company, and examining him on oath; compelling the production of records; receiving evidence on affidavits, issuing commissions for examination of witness and documents; and any other matter which may be prescribed. Sub-clause (2) seeks to provide the Director, Additional Director, Joint Director, Deputy Director or Assistant Director with the power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under the proposed Act. Sub-clause (3) proposes that all the persons summoned under sub-clause (3) of the proposed Act shall be bound to attend in person or through authorised agents, as such officer may direct, and they shall also be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required. Sub-clause (4) proposes that every proceeding under sub-clause (2) and sub-clause (3) shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code. Sub-clause (5) proposes to empower any officer mentioned in sub-clause (2) to impound and retain any records produced before him in any proceedings under this Act subject to the rules made in this regard by the Central Government. It is also proposed to be provided that an Assistant Director or a Deputy Director shall not impound the records without recording the reasons in writing, and will not retain the records for more than three months without obtaining the previous approval of the Director.

Clause 50 proposes to define the jurisdiction of authorities under the Act. These authorities shall exercise powers and perform functions as assigned to them by the Central Government by way of rules. Sub-clause (2) provides that the Central Government may have regard to all or any one of the territorial area, classes of persons, classes of cases and any other criterion specified Central Government in this behalf which in the direction or orders referred to in sub-section (1).

Clause 51 empowers the Central Government to issue directions, instructions and orders to the authorities and such authorities shall observe and follow such orders, instructions and directions of the Central Government. It is further sought to be provided that no such orders, instruction or directions shall be issued so as to require any authority to decide a particular case in a particular manner or so as to interfere with the discretion of the adjudicating authority in the exercise of his functions.

Clause 52 proposes that the Central Government may by a special or general order, empower any officer of the Central Government or of the State Government to act as authority under the proposed Act.

Clause 53 proposes to empower and require certain officers to assist the authorities in enforcement of the proposed Act. These officers are officers of the Customs and Central Excise Departments, officers appointed under section 5 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Income tax Authorities. Officers of the Stock Exchange recognised under section 4 of the Securities Contracts (Regulation) Act, officers of the Reserve Bank of India, officers of Police, officers of Enforcement appointed under section 4 of the Foreign Exchange Regulation Act, 1973, officers of the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 and such other officers of the Central Government, State Government, Local Authorities or banking companies as the Central Government may specify by notification.

Clause 54 seeks to provide punishment in respect of Authorities and officers exercising powers under this Act if they conduct a search or arrest any person vexatiously or without reasonable ground of suspicion. For every such offence the authority or officers shall be liable on conviction for imprisonment of a term extending up to three months or fine up to ten thousand rupees or both.

Clause 55 proposes to provide for punishment in the case of person wilfully and maliciously giving false information and so causing arrest or search of a person to be made under this Act. Such a person on conviction shall be liable for imprisonment of a term extending up to three months or fine up to ten thousand rupees or both.

Clause 56 proposes that no Court shall take cognizance of any offence under clauses 54 and 55 except with the previous sanction of the Central Government.

Clause 57 seeks to provide that the provisions of the Code of Criminal Procedure, 1973 shall apply in so far as it is not inconsistent with the provisions of this Act to arrest, searches, seizures, attachments, confiscations, investigations, prosecution and all other proceedings under the proposed Act.

Clause 58 provides that the Director or any other authority specified by him may furnish information received or obtained in performance of his duties under the proposed Act to any officer, authority or body performing any function under any Law relating to imposition of any tax, duties or cess or to dealings in foreign exchange or to prevent illicit traffic in Narcotic Drugs and Psychotropic Substances or any other officer Authority of body notified in the Official Gazette in this behalf. Such information is to be provided if in the opinion of the Director or the other Authority it is necessary for the purpose of enabling the officer, Authority or Body to perform his or its functions under that Law.

Clause 59 provides that no suit prosecution or other legal proceeding shall lie against the Central Government for any authority exercising any power or discharging any function under the Act for anything done in good faith.

Clause 60 proposes that no notice, summons, order, document or other proceedings furnished or issued in pursuance of any provision of this Act shall be invalid or shall be deemed to be invalid merely by reasons of any mistake, defect or omission in such notice, summons, etc., if such notice summon, notice, etc., is in substance and effect in conformity with or according to the intent and purpose of the proposed Act.

Clause 61 proposes that when any fine imposed on any person under this Act is not paid within six months from the date of imposition then the Director or any other authorised officer may proceed to recover the amount from the said person as prescribed in Schedule II of the Income-tax Act, 1961. The Director or authorised officer shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule.

Clause 62 proposes that where the offence under the proposed Act is committed by a company, every person who at the time of contravention was in incharge and was responsible to the company for the conduct of the business of the company shall be deemed to be guilty of the contravention and shall accordingly be liable to be proceeded against and pun-

ished accordingly. It is proposed to provide that this sub-clause shall not render any such person liable for punishment, if he proves that the contravention took place without his knowledge or that he exercised due diligence to prevent such contraventions. Sub-clause (2) proposes that where a contravention of any provision of the proposed Act has been committed by a company and it is proved that the contravention has taken place with the consent or connivance, or due to neglect on the part of any Director, Manager, Secretary or other Officer of the company, then such Director, etc., shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Clause 63 proposes that the proposed Act is to have over-riding effect over other laws that are in force for the time being.

Clause 64 provides for continuance of proceedings in the event of death or insolvency of the person whose property has been attached under clause 7.

Clause 65 empowers the Central Government to make rules by notification for the Official Gazette for carrying out the provisions of the proposed Act.

Sub-clause (2) enumerates the various matters in respect of which rules may be made.

Clause 66 seeks to provide that every rule made under the proposed Act shall be laid as soon as after it is made, before each House of Parliament.

Clause 67 proposes to empower the Central Government to remove any difficulty arising in giving effect to the provisions of the proposed Act, by way of passing an order. It is provided that no such order shall be made after the expiry of two years from the commencement of the proposed Act.

FINANCIAL MEMORANDUM

Sub-clause (f) of clause 6 empowers the Central Government to appoint one or more persons not below the rank of Joint Secretary to the Government of India as Adjudicating or Adjudicating Authorities. Clause 24 empowers the Central Government to establish an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority. Clause 33 empowers the Central Government to provide the Appellate Tribunal with such officers and employees as the Central Government may deem fit. Sub-clause (1) of clause 48 empowers the Central Government to appoint such persons as it thinks fit to be authorities for purposes of proposed Act.

To begin with, it is proposed to constitute three Benches of the Appellate Tribunal at Delhi, Mumbai and Chennai. It is also proposed to appoint for each Bench of the Appellate Tribunal one officer to the rank of Joint Secretary to the Government of India, two Directors and four Assistant Directors with necessary staff and employees to assist such Bench. For establishing the Directorate of Money-laundering, it is proposed to appoint one Director in the rank of Special Secretary to Government of India and other authorities of appropriate ranks with necessary supporting staff and employees to assist the Director in discharge of his duties. It is also proposed to appoint four Adjudicating Authorities each in Delhi, Calcutta, Chennai and Mumbai with necessary officers, staff and employees to assist them in discharge of their duties.

The recurring expenditure for the aforesaid appointment in respect of salaries, wages and offices expenses, etc., is estimated to be Rs. 14 crore is per annum. The non-recurring expenditure in respect of office equipment, office furniture, electrical installation and motor vehicles, etc., is estimated to be Rs. 12 crores. The Bill does not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 65 of the Bill empowers the Central Government to make rules, by notification in Official Gazette for carrying out the provisions of the proposed Act. Such rules may provide, Inter-alia for form in which records referred in the proposed act may be maintained, the manner in which and the conditions subject to which the properties confiscated may be received and managed under sub-section (2) of the proposed section 9, the additional matter in respect of which the Adjudicating Authority may exercise the powers of a civil court under clause (1) of sub-section (1) of the proposed section 10, the manner in which records may be verified and maintained by financial institutions and inter- mediaries under clause (c) of sub-section (1) of proposed section 11, the procedure and manner of maintaining and furnishing information under sub-section (1) of section 11 as required under proposed section 14, the rules relating to search and seizure under sub-section (1) of proposed section 16, the manner in which records authenticated outside India may be received under sub-section (2) of proposed section 21, the form of appeal and the fee for filling such appeal, under sub-section (3) of proposed section 25, the salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under proposed section 29, the salaries and allowances and of the conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of proposed section 33, the additional matters in respect of which the Appellate Tribunal may exercise the powers of a civil court under clause (i) of sub-section (2) of proposed section 34, the additional matters in respect of which the authorities may exercise powers of a civil court under clause (f) of sub-section (1) of proposed section 49, rules relating to impounding and custody of records under sub-section (5) of proposed section 49 and any other matter which is required to be or may be prescribed.

The matter in respect of which the aforesaid rules may be made are generally matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 95 OF 1998

A Bill Further to amend the Salary, Allowances and Pension of Members of Parliament Act, 1954.

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

1. This Act may be called the Salary, Allowances and Pension of Members of Parliament (Amendment) Act, 1998.

Short title.

2. In section 3 of the Salary, Allowances and Pension of Members of Parliament Act, 1954 (hereinafter referred to as the principal Act), for the words "one thousand and five hundred rupees" and "two hundred rupees", the words "four thousand rupees" and "four hundred rupees" shall respectively be substituted.

Amendment of section 3.

3. In section 4 of the principal Act,—

Amendment of section 4.

(i) in sub-section (1), in clause (c), in sub-clause (ii), for the words "five rupees", the words "six rupees" shall be substituted;

(ii) the proviso to sub-section (2) shall be omitted.

Amendment of
section 5.

4. In section 5 of the principal Act, in sub-section (2),—

(i) in the proviso, for the word "twenty-eight", the word "thirty-two" shall be substituted;

(ii) after the proviso as so amended, the following proviso shall be inserted, namely:—

"Provided further that where the number of journeys performed by any member by air is less than thirty-two, then, such number of journeys not performed by him shall be carried over to the following year."

Amendment
of section 6B.

5. In section 6B of the principal Act, for clause (iii), the following clause shall be substituted, namely:—

"(iii) to free travel by any railway in India in first class air-conditioned or executive class in all trains by the spouse, if any, of the member from the usual place of residence of the member to Delhi and back and if such journey or any part thereof is performed by air from any place other than the usual place of residence of the member to Delhi and back, to an amount equal to the fare by air for such journey or part thereof."

Amendment
of section 8A.

6. In section 8A of the principal Act,—

(i) in sub-section (1),—

(a) for the words "one thousand and four hundred rupees", the words "two thousand and five hundred rupees" shall be substituted;

(b) in the first proviso, for the words "two hundred and fifty rupees", the words "five hundred rupees" shall be substituted;

(ii) for sub-section (1A), the following sub-section shall be substituted, namely:—

"(1A) With effect from the commencement of the Salary, Allowances and Pension of Members of Parliament (Amendment) Act, 1998, there shall be paid a pension of rupees one thousand per mensem, to the spouse, if any, or dependant of any member who dies during his term of office as such member, for a period of five years from the date of his death."

Amendment of
section 8B.

7. In section 8B of the principal Act, for the words "fifty thousand rupees", the words "one lakh rupees" shall be substituted.

STATEMENT OF OBJECT AND REASONS

The joint Parliamentary Committee and the Joint Committee on Salaries and Allowances of Members of Parliament have made several recommendations for increasing the salary, allowances and other facilities to Members of Parliament and pension to the former Members of Parliament. On the basis of the recommendations, the Government have proposed, *inter alia*, to increase the salary of Members of Parliament from rupees one thousand five hundred to rupees four thousand per month, to raise the daily allowance from rupees two hundred to rupees four hundred, to increase the number of single air journeys from twenty-eight to thirty-two in a year with a provision that unutilised air journey of the year will be carried over to the following year, to increase in road mileage from rupees five to rupees six per kilometre, allowing road mileage to a Member of Parliament if he travels by road between the place connected by rail, to increase the minimum pension from rupees one thousand four hundred to rupees two thousand five hundred per month, to increase the additional pension from rupees two hundred and fifty to rupees five hundred for each year exceeding five years of service as such member, to increase in pension to the spouse or dependant of a Member of Parliament from rupees five hundred per month to rupees one thousand per month in case such Member dies in harness. It is also proposed to increase the amount of car advance to a Member of Parliament from rupees fifty thousand to rupees one lakh and allow the spouse of the Member to travel free in all rail journeys in air-conditioned first class or executive class in all trains from usual place of residence to Delhi and back against present to and fro air-conditioned two tier rail travel facilities once during each session.

2. The Bill seeks to achieve the above objects.

MADAN LAL KHURANA.

NEW DELHI;

The 3rd August, 1998.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter No. F.13(2)/98-WS, dated the 3rd August, 1998 from Shri Madan Lal Khurana, Minister of Parliamentary Affairs to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the proposed Salaries and Allowances of Officers of Parliament (Amendment) Bill, 1998 has recommended its introduction in Lok Sabha under article 117(1) of the Constitution and for its consideration by Lok Sabha under article 117(3) of the Constitution.

FINANCIAL MEMORANDUM

Clauses 2 to 7 of the Bill seek to amend various provisions of the Act to provide for—

- (i) increase of salary from Rs. 1,500 to Rs. 4,000 per month;
- (ii) raise the daily allowance from Rs. 200 to Rs. 400;
- (iii) increase in single air journeys from 28 to 32 in a year with the provision that unutilised air journeys of a year will be carried over to the following year;
- (iv) (a) increase in road mileage from Rs. 5 to Rs. 6 per Km.;
(b) allow the road mileage to a Member of Parliament if he travels by road between the places connected by rail;
- (v) (a) increase in minimum pension from Rs. 1,400 to Rs. 2,500 per month;
(b) raise the additional pension from Rs. 250 to Rs. 500 for each year exceeding 5 years of service as Member of Parliament;
- (vi) increase in pension to spouse or dependent of Member of Parliament from Rs. 500 to Rs. 1,000 in case the Member of Parliament dies in harness;
- (vii) increase the amount of car advance from Rs. 50,000 to Rs. 1,00,000;
- (viii) allow the spouse of the Member to travel free in all rail journeys in 1st Class air-conditioned or executive class in all trains from usual place of residence to Delhi and back against the present to and fro of air conditioned two tier rail travel facility once during each session.

2. The above provisions would involve a recurring expenditure from the Consolidated Fund of India to the extent of fifteen crores and five lakh rupees per annum approximately and non-recurring expenditure of three crores and sixty-five lakh rupees.

3. The provisions of the Bill will not involve any other recurring or non-recurring expenditure .

BILL NO. 94 OF 1998

A Bill further to amend the Salaries and Allowances of Officers of Parliament

Act, 1953.

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:--

1. (1) This Act may be called the Salaries and Allowances of officers of Parliament (Amendment) Act, 1998.

Short title and
commence-
ment.

20 of 1953.

(2) It shall be deemed to have come into force on the 1st day of January, 1996.

2. In the Salaries and Allowances of officers of Parliament Act, 1953 (hereinafter referred to as the Principal Act), for sub-section (1), the following sub-section shall be substituted, namely:--

Amendment of
section 3.

"(1) There shall be paid to the Chairman of the Council of States a salary of forty thousand rupees per mensem."

3. In section 5 of the principal Act, the words "the Chairman of the Council of States and" shall be omitted.

Amendment of
section 5.

STATEMENT OF OBJECTS AND REASONS

At present the Chairman of the Council of States is entitled to salary, daily allowance and sumptuary allowance. In view of the enhancement being proposed in the salary, allowances and pension of Members of Parliament and also the amendment being proposed in the President's Emoluments and Pension Act, 1951 for the purpose of raising the salary of the President with effect from the 1st day of January, 1996, it is proposed that the total emoluments of the Chairman of the Council of States be also raised to Rs. 40,000 per month with effect from the 1st January, 1996 which is considered to be a reasonable level between the emoluments likely to be payable to the President of India and those likely to be payable to the Governor of a State.

2. The Bill seeks to achieve the above objects.

MADAN LAL KHURANA.

NEW DELHI;
The 3rd August, 1998.

**PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA.**

[Copy of letter No. F.13(2)/98-WS, dated the 3rd August, 1998 from Shri Madan Lal Khurana, Minister of Parliamentary Affairs to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the proposed Salaries and Allowances of Officers of Parliament (Amendment) Bill, 1998 has recommended its introduction in Lok Sabha under article 117(1) of the Constitution and for its consideration by Lok Sabha under article 117(3) of the Constitution.

FINANCIAL MEMORANDUM

Clauses 2 and 3 of the Bill seek to amend sections 3 and 5 of the Salaries and Allowances of Officers of Parliament Act, 1953 to provide that there shall be paid to the Chairman of the Council of States a consolidated Salary of Rs. 40,000 per month in lieu of salary, daily allowance and sumptuary allowance paid to him hitherto before. This would involve a recurring expenditure of Rs. 3,06,000 per annum and a non-recurring expenditure of Rs. 7,90,5000 on account of payment of arrears from the 1st January, 1996 to 31st July, 1998 from the Consolidated Fund of India.

3. The provisions of the Bill will not involve any other recurring or non-recurring expenditure.

BILL NO. 97 OF 1998

*A Bill further to amend the Governors (Emoluments, Allowances and Privileges)
Act, 1982*

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Governors (Emoluments, Allowances and Privileges) Amendment Act, 1998.

Amendment of
Act 43 of
1982.

2. In section 3 of the Governors (Emoluments, Allowances and Privileges) Act, 1982, for the words "rupees eleven thousand per mensem", the words "rupees thirty-six thousand per mensem" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of January, 1996.

STATEMENT OF OBJECTS AND REASONS

Clause (3) of article 158 of the Constitution provides that the Governors shall be entitled to such emoluments, allowances and privileges, as may be determined by Parliament by law, and until a provision in that behalf is so made, they will receive such emoluments, allowances and privileges as are specified under the Second Schedule to the Constitution. Parliament has enacted the Governors (Emoluments, Allowances and Privileges) Act, 1982 to provide for the emoluments, allowances and other privileges to Governors and section 3 thereof prescribes rupees eleven thousand per mensem as emoluments thereof. The above emoluments were made effective from 1st April, 1986.

2. Consequent upon the revision of salary and allowances of various constitutional authorities, it is considered necessary to enhance the emoluments of the Governors of States. There has been considerable pricerise since 1986 and the emoluments and allowances of the Governors have not been enhanced since then. It would, therefore, be appropriate to enhance their emoluments which were last revised in 1986.

3. It is proposed to enhance the emoluments of the Governors from rupees eleven thousand per mensem to rupees thirty-six thousand per mensem with effect from 1st January, 1996.

4. The Bill seeks to achieve the above object.

L.K. ADVANI.

New Delhi;
The 3rd August, 1998.

BILL NO. 96 OF 1998

A Bill further to amend the President's Emoluments and Pension Act, 1951.

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

Short title. 1. This Act may be called the President's Emoluments and Pension (Amendment) Act, 1998.

Amendment of 2. In section 1A of the President's Emoluments and Pension Act, 1951 (hereinafter referred to as the principal Act), for the words "twenty thousand rupees", the words "fifty thousand rupees" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of January, 1996. 30 of 1951.

3. In section 2 of the principal Act, in sub-section (1),—

Amendment of
section 2.

(i) for the words "one lakh twenty thousand rupees", the words "three lakh rupees" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of January, 1996;

(ii) the following proviso shall be inserted at the end, namely:—

"Provided that if any person before assuming the office of President, has held the office of the Vice-President, such person shall not be entitled to any pension and other benefits under the provisions of the Vice-President's Pension Act, 1997."

30 of 1997.

STATEMENT OF OBJECTS AND REASONS

Section 1A of the President's Emoluments and Pension Act, 1951 provides that there shall be paid to President by way of emoluments twenty thousand rupees per mensem. Sub-section (1) of section 2 of the Act provides for pension of one lakh twenty thousand rupees per annum to the retiring Presidents.

2. The emoluments and pension of President were last enhanced in 1990. Consequent upon the revision of the salary and allowances of various constitutional functionaries, it is considered necessary to enhance the emoluments of President and pension to the retiring Presidents. It is proposed that the emoluments of President be enhanced from rupees twenty thousand per mensem to rupees fifty thousand per mensem and pension from rupees one lakh twenty thousand per annum to rupees three lakhs per annum.

3. As the Vice-President's Pension Act, 1997 has been enacted to provide for payment of pension and other pensionary benefits to such persons who have held the office of the Vice-President of India, it is considered that the pension and the other facilities admissible under the proposed Bill may not be extended to such persons who have held the office of the Vice-President of India and subsequently becomes entitled to pension under the President's Emoluments and Pension Act, 1951. Therefore, it is proposed to provide for such a restriction under the President's Emoluments and Pension Act, 1951.

4. The Bill seeks to achieve the above objects.

New Delhi;

L.K. ADVANI.

The 3rd August, 1998.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter No. 1/1/97-M&G, dated the 3rd August, 1998 from Shri L.K. Advani, Minister of Home Affairs to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the President's Emoluments and Pension (Amendment) Bill, 1998, recommends the introduction and consideration of the Bill in Lok Sabha under article 117(1) and 117(3) of the Constitution.

FINANCIAL MEMORANDUM

Clauses 2 and 3 of the Bill provide for increase in the emoluments of the President and pension of the former President of India.

2. The Bill, if enacted, will involve expenditure from the Consolidated Fund of India. It is likely to involve an additional non-recurring expenditure of rupees 15,90,000 approximately towards arrears in salary and pension and recurring expenditure of rupees 7,20,000 per annum.

S. GOPALAN,
Secretary-General.

3. In section 2 of the principal Act, in sub-section (1),—

Amendment of
section 2.

(i) for the words "one lakh twenty thousand rupees", the words "three lakh rupees" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of January, 1996;

(ii) the following proviso shall be inserted at the end, namely:—

"Provided that if any person before assuming the office of President, has held the office of the Vice-President, such person shall not be entitled to any pension and other benefits under the provisions of the Vice-President's Pension Act, 1997."

30 of 1997.

STATEMENT OF OBJECTS AND REASONS

Section 1A of the President's Emoluments and Pension Act, 1951 provides that there shall be paid to President by way of emoluments twenty thousand rupees per mensem. Sub-section (1) of section 2 of the Act provides for pension of one lakh twenty thousand rupees per annum to the retiring Presidents.

2. The emoluments and pension of President were last enhanced in 1990. Consequent upon the revision of the salary and allowances of various constitutional functionaries, it is considered necessary to enhance the emoluments of President and pension to the retiring Presidents. It is proposed that the emoluments of President be enhanced from rupees twenty thousand per mensem to rupees fifty thousand per mensem and pension from rupees one lakh twenty thousand per annum to rupees three lakhs per annum.

3. As the Vice-President's Pension Act, 1997 has been enacted to provide for payment of pension and other pensionary benefits to such persons who have held the office of the Vice-President of India, it is considered that the pension and the other facilities admissible under the proposed Bill may not be extended to such persons who have held the office of the Vice-President of India and subsequently becomes entitled to pension under the President's Emoluments and Pension Act, 1951. Therefore, it is proposed to provide for such a restriction under the President's Emoluments and Pension Act, 1951.

4. The Bill seeks to achieve the above objects.

New Delhi;

L.K. ADVANI.

The 3rd August, 1998.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. 1/1/97-M&G, dated the 3rd August, 1998 from Shri L.K. Advani, Minister of Home Affairs to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the President's Emoluments and Pension (Amendment) Bill, 1998, recommends the introduction and consideration of the Bill in Lok Sabha under article 117(1) and 117(3) of the Constitution.

FINANCIAL MEMORANDUM

Clauses 2 and 3 of the Bill provide for increase in the emoluments of the President and pension of the former President of India.

2. The Bill, if enacted, will involve expenditure from the Consolidated Fund of India. It is likely to involve an additional non-recurring expenditure of rupees 15,90,000 approximately towards arrears in salary and pension and recurring expenditure of rupees 7,20,000 per annum.

S. GOPALAN,
Secretary-General.

